

EXHIBIT 2

Part 1 of 2

COPY

CALIFORNIA COURT OF APPEAL
SIXTH APPELLATE DISTRICT

In re

BRANDIE TRIPP

Defendant

For Writ of Habeas Corpus

Case No.

H029507

FILED

RECEIVED

CLERK OF COURT

FILED

PETITION FOR WRIT OF HABEAS CORPUS
MEMORANDUM OF POINTS & AUTHORITIES
EXHIBITS A-C

ADRIAN T. WOODWARD, Esq.
Law Offices of Adrian T. Woodward
State Bar # 184011
4266 Atlantic Avenue
Long Beach, CA 90807
Telephone: (562) 424-4880

Counsel for Defendant
BRANDIE TRIPP

TABLE OF CONTENTS

	<u>Page No.</u>
Custody	2
Jurisdiction & Venue	2
Administrative Remedies	2
Lower Court Remedy	2
Petitioner's Offense, Prior Record, and Commitment	3
Petitioner's Post-Conviction Record	4
Petitioner's Parole Risk Evaluations	4
Parole Proceedings	5
1986-2001	5
Petitioner's First Parole Grant & Reversal (2003)	5
Petitioner's Second Parole Grant (2004)	6
The Governor's Reversal of Petitioner's Second Parole Grant	8
The Requirements of Due Process; Standard of Review	9
Petitioner's Constitutional Claims	10
I. The Governor's Action Violated Due Process Because It Was Based On Incorrect "Facts" And Breached The Express Terms Of Her Plea Bargain	10
II. Because The Governor's Finding, That Petitioner's Parole Poses "An Unreasonable Risk Of Danger To Society," And That She Is Therefore Unsuitable For Parole, Is Inapposite To The Record And Supported By No Evidence Whatsoever, Parole Reversal On That Basis Abrogated Due Process And Petitioner's Liberty Interest In Parole.	17
III. Invocation Of The Unchangeable Facts Of Petitioner's Commitment Offense To Interminably Preclude Her Parole Abrogates Due Process	14

TABLE OF CONTENTS
(Continued)

IV. Petitioner Did Not Receive Due, Individualized, Or ANY Consideration By Governor Schwarzenegger, Who Did Not Personally Review Petitioner's Files And The Evidence Relied On By The Panel As Required, And Because The Decision Was A Boilerplate Of All Reversals Of Paroles Granted By BPT In Murder Cases	21
---	-----------

V. The Governors' Actions Were Prohibited By The Ex Post Facto And Due Process Clauses Of The Federal And California Constitutions	24
---	-----------

Conclusion; Relief Requested	28
-------------------------------------	-----------

Verification	29
---------------------	-----------

TABLE OF EXHIBITS

Exhibit A Abstract of Judgment

Exhibit B Certified transcript, May 17, 2004, parole hearing

Exhibit C Governor's reversal decision, October 11, 2004

Exhibit D Petitioner's psychological (forensic) evaluations

Exhibit E Petitioner's correctional evaluation

Exhibit F Communications regarding BPT's "Executive Summaries"

Exhibit G Monterey County Superior Court order denying habeas corpus petition

TABLE OF AUTHORITIES

Page Nos.

Cases

<i>Biggs v. Terhune</i> (9 th Cir. 2003) 334 F.3d 910	9, 18, 19, 21, 26
<i>Brown v. Poole</i> (9 th Cir. 2003) 337 F.3d 1155.....	14, 26
<i>Fleming v. Oregon Board of Paroles</i> (9 th Cir.1993) 998 F.2d 721	25
<i>Garner v. Jones</i> (2000) 529 U.S. 244	25
<i>Hudson v. Kane</i> (N.D. Ca. 2005) __F.Supp.2d__, 2005 WL 2035590	9, 20, 21
<i>In re Arafiles</i> (1992) 6 Cal.App.4 th 1467	22
<i>In re Dannenberg</i> (2005) 34 Cal.4 th 1061	15, 18
<i>In re Dunham</i> (1976) 16 Cal. 3d 63.....	22
<i>In re Ibarra</i> (1983) 34 Cal.3d 277	14, 26
<i>In re Minnis</i> (1972) 7 Cal. 3d 639	9
<i>In re Ramirez</i> (2001) 94 Cal.App.4 th 549	9, 22
<i>In re Rosenkrantz</i> (2000) 80 Cal.App.4 th 409.....	22
<i>In re Rosenkrantz</i> (2002) 29 Cal.4 th 616.....	9, 16, 23, 24, 27
<i>In re Scott</i> (2005) __ Cal.App.4 th __, 2005 WL 2651154	28
<i>In re Smith</i> (2003) 109 Cal.App.4 th 489	12, 18
<i>In re Smith</i> (2003) 114 Cal.App.4 th 343	12
<i>In re Stanley</i> (1976) 54 Cal.App.3d 1030.....	22
<i>In re Stanworth</i> (1982) 33 Cal.3d 176	25
<i>INS v. St. Cyr</i> (2001) 533 U.S. 289.....	14, 26, 27
<i>Irons v. Warden</i> (E.D.Cal. 2005) 358 F. Supp. 2d 936.....	9, 20, 21
<i>Johnson v. Gomez</i> (9 th Cir. 1996) 92 F.3d 964	22
<i>McQuillion v. Duncan</i> (9 th Cir. 2002) 306 F.3d 895	9
<i>Miller v. Florida</i> (1987) 482 U.S. 423.....	25
<i>Newton v. Rumery</i> (1987) 480 U.S. 386	13, 26
<i>Nulph v. Faatz</i> (9 th Cir. 1994) 27 F.3d 451.....	25
<i>People v. Barasa</i> (2002) 103 Cal.App.4 th 287.....	15
<i>People v. Collins</i> (1996) 45 Cal.App.4 th 849.....	13, 26
<i>People v. Cunningham</i> (1996) 49 Cal.App.4 th 1044.....	13
<i>People v. Frazer</i> (1999) 21 Cal.4 th 737	27

TABLE OF AUTHORITIES

(continued)

<i>People v. Harvey</i> (1979) 25 Cal.3d 754.....	15, 16
<i>People v. Leroy</i> (1984) 155 Cal.App.3d 602	13
<i>People v. Mancheno</i> (1982) 32 Cal.App.3d 855.....	13
<i>People v. Nieto Benitez</i> (1992) 4 Cal 4 th 91.....	11
<i>People v. Roberts</i> (1992) 2 Cal 4 th 271.....	11
<i>People v. Sanchez</i> (2001) 86 Cal. App. 4 th 970	11
<i>People v. Vargas</i> (2001) 91 Cal.App.4th 506.....	26
<i>People v. Watson</i> (1981) 30 Cal 3d 290	11
<i>Santabello v. New York</i> (1971) 404 U.S. 257	14
<i>Stogner v. California</i> (2003) 156 L.Ed.2d 544.....	27
<i>Weaver v. Graham</i> (1982) 450 U.S. 24	25
<i>Weaver v. Maas</i> (9 th Cir. 1995) 53 F.3d 956	25

Statutes

Pen.C. §1508.....	2
Pen.C. § 2900.5.....	4
Pen.C. § 3041.....	2, 5, 9, 18
Pen.C. § 3041.2.....	5, 22, 23, 24, 26
Pen.C. § 4019.....	4
Pen.C. § 5000.....	1
Pen.C. § 5075.....	1

Regulations

15 CCR § 2000.....	3
15 CCR § 2401	5, 9
15 CCR § 2402	5, 9, 11, 22
15 CCR § 2403	4
15 CCR § 2410	4

TABLE OF AUTHORITIES

(continued)

Constitutional Provisions

U.S.Const., Art.I, §10	25
Cal.Const., Art. I, § 9	25
Cal.Const., Art.V, § 8(b)	5, 9, 22, 24, 26
Cal.Const., Art.VI, § 10	2

ADRIAN T. WOODWARD, Esq.
Law Offices of Adrian T. Woodward
State Bar # 184011
4000 Long Beach Boulevard
Long Beach, CA 90807
Telephone: (562) 424-4880

Counsel for Petitioner
BRANDEE TRIPP

CALIFORNIA COURT OF APPEAL
SIXTH APPELLATE DISTRICT

In re

BRANDEE TRIPP,

Petitioner,

For Writ of Habeas Corpus.

Case No.: _____

**PETITION FOR WRIT
OF HABEAS CORPUS;
MEMORANDUM OF
POINTS & AUTHORITIES;
EXHIBITS A-G**

Based on the facts, grounds, authorities and exhibits herein, petitioner respectfully applies for issuance of a writ of habeas corpus vacating Governor Schwarzenegger's action of October 11, 2004, that reversed the May 17, 2004, decision by the Board of Prison Terms (BPT, now BPH, Board of Parole Hearings; see Pen.C. § 5075) granting petitioner parole (the second time petitioner's parole grant has been reversed by a Governor), reinstating BPT's decision, and directing the California Department of Corrections and Rehabilitation (CDCR, formerly California Department of Corrections, CDC; see Pen. C. § 5000) to release petitioner on parole forthwith and to credit her parole term with the time during which she has been confined in prison in excess of her prison term calculated by BPT at her May 17, 2004, parole hearing after its reduction by appropriate postconviction credit.

Custody

Petitioner is confined by CDCR at California Institution for Women, Corona, California, Dawn Davison, Warden.

Jurisdiction and Venue

This Court has original jurisdiction to issue the writ and venue to adjudicate the petition (petitioner was prosecuted and her parole will occur in Monterey County). (Cal.Const., Art.VI, § 10; Pen.C. § 1508.)

Administrative Remedies

There is no administrative remedy for an unconstitutional action by a governor reversing a BPH grant of parole.

Lower Court Remedy

Petitioner filed a similar petition in the Monterey County Superior Court (no. HC 05015) which was denied on September 18, 2005. A copy of the order of denial is attached as exhibit G. The Court seemed to agree that the interminable preclusion of petitioner's parole (14 denials by 12 BPT panels and 2 governors since she became eligible to parole 16 years ago) based on unchangeable facts of her 25-year-old offense (she was an accessory to a second degree murder) is tantamount to conversion of her prison term from 15 years-to-life with the possibility of parole to life without the possibility of parole. The court also found the process to be contrary to the parole statute, Pen.C. § 3041, but ratified the Governor's authority to continue to use the alleged facts of petitioner's offense to preclude her parole, apparently forever.

The Superior Court did not reach the merits of the majority of petitioner's due process claims: that Governor Schwarzenegger did not review petitioner's case or play any role in "his" decision, that the facts of her offense set forth by the Governor in

support of his decision were false, irrelevant to parole suitability, unsupported by any evidence whatsoever and/or contrary to the record, and that preclusion of petitioner's parole based on recasting of her offense as a first degree murder and by means of a new level of gubernatorial review more onerous than the parole determination process in place at the time she entered into her plea contract with the State abrogated her rights under the Due Process and Ex Post Facto Clauses.

PETITIONER'S OFFENSE, PRIOR RECORD, & COMMITMENT

On February 11, 1981, pursuant to her guilty plea to second degree murder, petitioner was sentenced by the Monterey County Superior Court, case no. CR7639, to 15 years-to-life for the July 3, 1979, murder of Tameron Carpenter. (Exhibit A.) At the time of the offense, petitioner was 20 years old and had no prior criminal record. (Exhibit B, pp. 10-11, 23-25.)

Randy Cook and Hilton Tripp, petitioner's husband, kidnapped the victim, age 10, in order to receive \$1,000 promised by William Ruckert (Ruckert), petitioner's stepfather, to prevent the victim from testifying against Ruckert in a child molestation case. Cook and Hilton Tripp eventually choked, killed, and buried the victim. Petitioner, as revenge against her stepfather who had sexually molested and physically abused her from age 7 to age 19, planned to keep Tamara's whereabouts secret, then to release her to testify against him. She sent Tamara to the store, where she would be abducted by her husband and Cook. Petitioner, who did not plan or anticipate a murder, has since before her commitment accepted responsibility and admitted her role in the offense. (Exhibit B, pp. 10-21, 23-27.)

Petitioner was committed to prison on February 18, 1981. Her minimum eligible parole date (MEPD)¹ lapsed on May 6, 1989. (Exhibit B, p.1.) The maximum

¹ The minimum eligible parole date (MEPD) is defined as "the earliest date on which an ISL or life prisoner may be released on parole." (15 CCR § 2000(b)(67).)

prison term prescribed by the regulations for the facts of petitioner's particular second degree murder lapsed in 1992.² The net prison term set by the 2004 BPT parole hearing panel, 131 months, when reduced by 29 months of pre-sentencing credits, lapsed in 1990. (Exhibit B, p. 69.)

PETITIONER'S POST-CONVICTION RECORD

Petitioner has maintained an exemplary, disciplinary-free record for more than 16 years. Her last disciplinary infraction occurred in 1988 (failure to report to work). Her work supervisors' reports are consistently excellent. Her classification score (19) is the lowest attainable for a lifer. Petitioner earned her GED and became certified in two vocations, Word Processing and Forklift Operation. She has successfully completed all applicable therapy and self-help programming, including attendance in AA and NA since 1988, Women Against Abuse, Relapse Prevention, Breaking Barriers, Drug Awareness Counseling, New Beginnings, SOS, Inmate Assistance Module, American Bible Program, and Arts in Corrections. Petitioner's file is replete with laudatory chronos for her conduct, work, and reform from custody and free staff, and for her charitable work. Her parole plans, repeatedly approved by BPT, include offers of employment, a residence, and substantial family and community support. BPT has consistently acknowledged petitioner's exemplary record of good conduct, work, reform, and rehabilitation. See exhibit A, pp. 65-68; exhibit E.

PETITIONER'S PAROLE RISK EVALUATIONS

In recent years petitioner has been uniformly evaluated to pose a low (if any) parole risk. In the current psychological evaluation Peter Hu, M.D., a forensic

² 15 CCR § 2403(c) prescribes a maximum base term of 18 years (subsec. II-A: victim had relationship to prisoner but not directly assaulted by prisoner), to be reduced by 64 months of postconviction credit (4 months for each of 16 disciplinary-free years of imprisonment per 15 CCR § 2410), resulting in a net maximum prison term of 12 years, 8 months, which must be further reduced by deducting 875 days of pre-sentencing Pen.C. §§ 2900.5, 4019 credit (exhibit A), resulting in a parole date that lapsed in 1992.

1 psychiatrist, concluded that petitioner has accepted responsibility for her offense, has
 2 appropriate insight and remorse, and would not be dangerous if released to the
 3 community. (Exhibit D, p. 3.) Two years earlier, a different forensic psychiatrist
 4 Robert D. McDaniel, M.D., reached the same conclusions. (Exhibit D, pp. 5-6.) The
 5 same assessment occurred in 1999. (Exhibit D, pp. 13-14.)

7 **PAROLE PROCEEDINGS**

8 **1986-2001**

9 At twelve parole hearings between 1986 and 2001, BPT panels found petitioner
 10 unsuitable for parole based largely or entirely on her commitment offense, and
 11 therefore refused to set her prison term or a parole date.³ At her ten hearings since
 12 1990, the panels scheduled petitioner's subsequent hearing in one year, the shortest
 13 interval permitted.⁴

14 **Petitioner's First Parole Grant and Reversal (2003)**

15 On November 6, 2002, a BPT panel unanimously found petitioner suitable for
 16 parole and set her prison term and a parole date. The panel's grounds for suitability
 17 were similar to those set forth at petitioner's 2004 hearing, detailed *infra*.

18 Predictably, on April 4, 2003, former Governor Gray Davis, exercising his
 19 authority under Pen.C. § 3041.2 and Art. V, § 8(b) of the California Constitution, as he
 20 promised to do in all murder cases, reversed petitioner's parole grant based on her
 21 commitment offense.
 22
 23
 24
 25

26 ³ The parole statutes and regulations prescribe a two-step process: The panel first determines whether a lifer is suitable or
 27 unsuitable for parole based on a preponderance of the evidence addressing the issue of whether parole would pose "an
 28 unreasonable risk of danger" to "public safety." The panel proceeds to the second step of determining the length of the
 prison term and a parole date for lifers it finds to be suitable for parole. Pen.C. § 3041(b); 15 CCR §§ 2401, 2402(a), (b).

⁴ Petitioner's counsel will provide, upon the Court's request, certified copies of her past parole hearing transcripts. The transcript of petitioner's 2004 parole hearing is attached as exhibit B.

Petitioner's Second Parole Grant (2004)

On May 17, 2004, a new panel unanimously found petitioner suitable. The panel addressed at length the findings stated by Governor Davis for his reversal of the previous panel's grant of parole, and read his report into the record. See exhibit B, pp. 29-38, 48-54. The District Attorney did not oppose parole, nor did members of the victim's family. The panel explained in detail the grounds for its finding of suitability:

The Panel reviewed all information received from the public and relied on the following circumstances in concluding that the prisoner is suitable for parole and would not pose an unreasonable risk of danger to society or a threat to public safety if released from prison.

The prisoner, while imprisoned, has enhanced her ability to function within the law upon release through participation in educational programs. She has obtained a GED [and] a vocational certificate in forklift operation and also in vocational word processing . . . She's been in AA and NA since . . . 1988. She's been in the SOS program. She's taken the Women Against Abuse program, the American Bible Academy, Arts and Correctional Music Program, the Relapse Prevention program, the HIV AIDS Prevention program, and Breaking Barriers. Her institutional job assignment is in the PIA working as a label mechanic operator since 2000, and she has received satisfactory work reports in that assignment.

The prisoner lacks a significant criminal history of violent crime. Because of maturation, growth, greater understanding, and advanced age have reduced the probability of her recidivism.

The prisoner has realistic parole plans, which includes a job offer and family support . . . I would rate the parole plans as superior. She has a place to live at the Casa Solano, which is in Grover Beach [and two] job offer[s].

The prisoner has maintained close family ties while in prison by letters and visits [and] has maintained positive institutional behavior, which indicates significant

1 improvement in self-control. She has had no 115s
2 [disciplinary infractions] since 1988 . . . So we feel that she
3 has a good disciplinary record while in custody.

4 Prisoner shows signs of remorse. She has indicated that she
5 understands the nature and the magnitude of the offense and
6 accepts responsibility for her criminal behavior and has a
7 desire to change towards good citizenship.

8 The most recent psychological report, authored by Peter Hu .
9 . . a staff psychologist . . . is favorable. He states,

10 The inmate has not been dangerous within a
11 controlled setting, and I do not believe that she will
12 be dangerous if released to the community. The
13 inmate has gained a healthier respect for the rights
14 and privacy of others and appears to have followed
15 diligently in the rules and regulations here at the
16 institution. The inmate has been able to keep her
17 pathological characteristics in control and she has
18 obtained a certain level of peace and contentment
19 with herself. Risk factor, as always, would be if
20 she ever attempted to resort to acts of criminality,
21 though given her peace and contentment, I do not
22 suspect that to be the case.

23 The psych evaluation prior to that was prepared on 9/10 of
24 '99 by Robert D. McDaniels, who's also a staff psychiatrist.
25 It is favorable. He states,

26 The inmate has not been dangerous within a
27 controlled setting. I do not believe she would be
28 dangerous if released to the community. Her
orientation was obviously changed over many
years, as reflected by a good work ethic and her
involvement within the institution. A significant
risk factor, as always, would be appropriate parole
plans. However, these have been deemed viable in
the past. (Exhibit B, pp. 65-68.)

1 The panel set petitioner's base term at the mid-term of 204 months prescribed by
2 the regulations for the specific factors of her second degree murder including her
3 relationship with the victim and the fact that she did not participate in the killing. The
4 panel deduced 73 months of postconviction credit as prescribed in the regulations,
5 resulting in a total period of confinement of 131 months. (Exhibit B, pp. 68-69.)

6 Parole conditions imposed by the panel included abstinence from alcohol and
7 substance abuse therapy and testing. (Exhibit B, p. 69.)

8 In closing, the panel commented:

9 Couple of comments. I noticed that when you talked
10 About . . . your involvement in the crime, you were very
11 emotional. And I think that is a consideration. I also
12 took into consideration the fact that you've been denied
13 and still kept programming. You didn't give up. There's
14 a lot of people in the institution that will depend on you
15 because people who go out and make mistakes and
16 have to come back, it reflects on them. We as panel
17 members say, where did I go wrong. So you've got a
18 lot of things resting on you. But I want to say that I
19 didn't give you the date. You earned it. You've done a
20 good job in here. So good luck in the future. (Exhibit B,
21 pp.70-71.)

22 The Governor's Reversal of Petitioner's Second Parole Grant

23 On October 11, 2004, Governor Schwarzenegger reversed petitioner's second
24 parole grant, concluding as always, "I believe she would pose an unreasonable threat to
25 public safety if released from prison at this time." (Exhibit C, p. 3.) The sole ground
26 stated for that conclusion was the 25-year-old commitment offense itself, described by
27 the Governor as "premeditated," "monstrous," and demonstrative of "exceptional
28 depravity and an utterly callous disregard for human life and suffering" that petitioner,
who was in a "position of trust . . . could have prevented." (Exhibit C, pp. 2-3.)

REQUIREMENTS OF DUE PROCESS; STANDARD OF REVIEW

1. State parole statutes and regulations bestow on life prisoners a liberty interest in parole protected by due process. (*In re Rosenkrantz* (2002) 29 Cal.4th 616, 621 ["*Rosenkrantz*"]; see *McQuillion v. Duncan* (9th Cir.2002) 306 F.3d 895, 901-903 ["*McQuillion*"].)

2. Said liberty interest is heightened considerably in the case of an inmate like petitioner who has already been granted a parole date. (*McQuillion*, 305 F.3d at 903.)

3. Petitioner's liberty interest required her being found suitable for and granted parole because, after her minimum eligible parole date lapsed, she was evaluated not to pose an unreasonable risk of danger to public safety. (Pen.C. §3041(a); 15 CCR §§ 2401, 2402(a).) Accordingly, BPT panels found petitioner suitable and set parole dates at her successive 2002 and 2004 hearings.

4. Although the commitment offense may justify a finding of unsuitability in some cases, it cannot serve as the basis for *repeated* or *interminable* parole denials. (*Biggs v. Terhune* (9th Cir. 2003) 334 F.3d 910, 916 [*Biggs*]; *Irons v. Warden of California State Prison – Solano* (E.D. Ca. 2005) 358 F.Supp.2d 936, 946-947; *Hudson v. Kane* (N.D. Ca. 2005) __F.Supp.2d__, 2005 WL 2035590 at p. 9.)

5. The BPT panel was required to base its findings on a weighing of all relevant, reliable evidence before it. (*Rosenkrantz*, 29 Cal.4th at 655; 15 CCR § 2402(b); *In re Minnis* (1972) 7 Cal. 3d 639, 646; *In re Ramirez* (2000) 94 Cal.App.4th 549, 569-672.)

6. Governors are bound by the same statutory and regulatory constraints that bind parole determination by BPT. A governor's decision reversing a BPT parole grant must be based on the governor's personal review of the same evidence that the BPT panel considered and upon the same factors that the BPT panel was required to consider. (*Rosenkrantz*, 29 Cal.4th at p.676; Cal.Const., Art.V, §8(b).)

7. Due process requires that the grounds set forth by a governor for a decision reversing a BPT parole grant must be supported by at least some reliable, relevant evidence. (*Rosenkrantz*, 29 Cal.4th at p. 658.)

8. As set forth by the controlling authorities cited *infra*, the Governors, head of the Executive Branch, were bound by the terms of petitioner's plea agreement and constitutionally and contractually prohibited from imposing a new, extremely more onerous level of gubernatorial review to reverse her parole grant and preclude her parole (interminably, since the basis for reversal can never change) by mischaracterizing her commitment offense as a premeditated first degree murder after the Executive Branch (prosecutor) struck that offense as a condition of the plea contract and after petitioner had fully performed her end of the bargain.

PETITIONER'S CONSTITUTIONAL CLAIMS

I. THE GOVERNOR'S ACTION VIOLATED DUE PROCESS BECAUSE IT WAS BASED ON INCORRECT "FACTS" AND BREACHED THE EXPRESS TERMS OF HER PLEA BARGAIN

The Governor's sole ground for his "unreasonable risk"/parole unsuitability finding, petitioner's commitment offense, was legally untenable because (1) it was based on incorrect "facts" and (2) it improperly re-classified petitioner's offense and sentence as that for first degree murder in violation of her plea bargain and due process.

1. The Governor Relied on Incorrect Facts

The Governor stated petitioner, her husband, and Cook "decided to kidnap *and kill*" the victim, that petitioner "helped plan the kidnap *and murder*." (Exhibit C, p. 2; emphasis added.) No such testimony was elicited against petitioner who was not tried. In the perpetrators' trials, a single witness testified that he overheard the three defendants mention a possible killing. Petitioner did not contemplate murder or agree to do more than what she did, help set up the kidnapping by sending the victim to the store. She intended, as revenge against her stepfather who had sexually and physically abused her for 12 years, to keep Tamara's location secret until his trial and then insure her testimony against him. Petitioner was shocked and dismayed to learn of the

1 victim's death. (Exhibit B, pp. 12-23.) Had petitioner known that Tameron would be
 2 harmed, she would not have participated even in the revengeful act. Petitioner did not
 3 participate in, plan, anticipate, or contemplate a murder; she participated in a
 4 kidnapping. Notably, the prosecutor's office, although notified, did not submit
 5 documents or attend petitioner's hearing to claim otherwise. Contrary to the
 6 Governor's notion, petitioner's statements are not "inconsistent." For more than 25
 7 years she has consistently maintained that although murder may have been discussed
 8 at one point, it was not in the plan that she helped initiate or anticipated by her.

9 Accordingly, reversal of petitioner's parole grant based on the notion that she
 10 planned or premeditated a murder was arbitrary and abrogated due process.

11 **2. "Utterly Callous Disregard for Human Life and Suffering"**⁵

12 Use of this factor, recited in all of the Governor's parole reversals in second
 13 degree murder cases, is arbitrary because (1) "utterly" or otherwise petitioner did not
 14 disregard life or suffering because she did not plan, anticipate or know that a murder
 15 would occur and more importantly, because disregard for life is the *definition* of
 16 implied malice, an element of second degree murder, it could be (and is) used in all
 17 second degree murder case parole reversals. In *People v. Roberts* (1992) 2 Cal.4th 271,
 18 the California Supreme Court explained that the implied malice theory of second-
 19 degree murder applies :
 20

21 "[W]hen a defendant, knowing that his or her conduct
 22 endangers a life, and acting with a conscious disregard of the
 23 danger, commits an act the natural consequences of which
 24 are dangerous to life." *Roberts, supra*, 2 Cal.4th at pp. 281-
 25 282; emphasis added; See also CALJIC 8.11; *People v. Nieto*
 26 *Benitez* (1992) 4 Cal.4th 91, 93; *People v. Watson* (1981) 30
 27 Cal.3d 290, 299-301; *People v. Sanchez* (2001) 86 Cal.App.
 28 4th 970, 975-976, 981.

⁵ 15 CCR § 2402(c)(1)(D) lists the unsuitability factor, "[t]he offense was carried out in a manner which demonstrates an exceptionally callous disregard for human suffering."

Our courts have repeatedly cautioned governors, who are bound by the same parole determination guidelines that govern BPT, against such reckless, routine use of these terms in cases like petitioner's in which they are inherent or do not apply. Because petitioner's offense was not in that category, parole reversal based on her planning and premeditating a murder or acting with disregard for life and suffering, an element of her offense, violated due process. See *In re Mark Smith* (2003) 109 Cal.App.4th 489, 506 & fn.9; also *In re Ernest Smith* (2003) 114 Cal.App.4th 343, 367.

3. Basing Parole Reversal on a Re-characterization of the Offense as a First Degree Murder Abrogated Due Process and Breached the Express Terms of Petitioner's Plea Bargain

In exchange for the State's promise to determine her offense to be second degree murder and her sentence to be that for second degree murder, petitioner waived her constitutional rights, pled guilty to that offense, and testified truthfully as promised in order to secure the State's first degree murder convictions of the two remaining defendants. In entering into the plea bargain, petitioner understood and relied on the fact that she would be eligible for parole around 1989 and that her parole suitability would be determined only by BPT according to the laws then in effect.

The Governor's sole ground for reversing petitioner's parole grant was the commitment offense, re-cast by the Governor as a first degree murder. The Governor stated that petitioner "premeditated" the offense, that she "planned" the victim's murder. (Exhibit C, p. 2.) Aside from the falsity of that finding, reversal on that basis violated the express term of petitioner's plea agreement that the offense was *not* premeditated, *not* first degree, and did *not* involve the planning of a murder on her part.

Even if "some evidence" existed that petitioner planned or premeditated a murder is also irrelevant because the Due Process Clause prohibits the State from reneging on its promise. The Legislative Branch has decreed a different and less severe punishment for second degree murder than that prescribed for first degree

1 murder. When the Executive Branch enters into a plea bargain with a defendant it
2 binds itself, as when enacting a contract, to the terms of that plea. If the principal term
3 of a plea is that the murder be designated as being of the second degree, then plainly, it
4 would be a violation of that plea for a different division of the Executive Branch to
5 unilaterally re-characterize the appropriate punishment. The Judicial Branch, by
6 accepting a plea reducing a first degree murder to a second degree, places a
7 constitutional imprimatur upon the contract and is available to either party seeking
8 redress. See *People v. Cunningham* (1996) 49 Cal.App.4th 1044, 1047: “A plea
9 agreement is, in essence, a contract between the defendant and the prosecutor to which
10 the court consents to be bound.”

11 Sometimes it is the defendant who breaches the plea. In *People v. Collins*
12 (1996) 45 Cal.App.4th 849, 863, when the defendant breached the plea bargain by
13 refusing to testify as promised against a co-defendant, the Court of appeal held: “The
14 reciprocal nature of a plea bargain agreement mandates that either party to the
15 agreement be entitled to enforce the agreement in a situation where the party is
16 deprived of the benefit of the bargain.” Usually, all that is required of a defendant is to
17 waive his or her constitutional rights and accept immediate punishment. See *Newton v.*
18 *Rumery* (1987) 480 U.S. 386, 394: “When the State enters a plea bargain with a
19 criminal defendant, it receives immediate and tangible benefits, such as promptly
20 imposed punishment without the expenditure of prosecutorial resources.” After a
21 defendant has performed his or her part of the bargain the remedy of specific
22 performance of the State’s obligation exists. (*People v. Leroy* (1984) 155 Cal.App.3d
23 602, 606; *People v. Mancheno* (1982) 32 Cal.3d 855, 860.)

24 Petitioner gave the State much more than the usual acceptance of immediate
25 punishment. She agreed to testify against the codefendants. In doing so, petitioner
26 substantially assisted the prosecutor and State in securing two first degree murder
27 convictions, and exposed herself to the fright and peril of a “rat jacket” that has
28 persisted throughout 25 years of her imprisonment.

1 The government insures a defendant that her punishment will be imposed as
2 *contemplated at the time of the plea*. Although remedying the Governor's breach of a
3 plea agreement may vindicate the rights of a disrespected member of society, it focuses
4 the Court's resources on the honor of the government and the fair administration of
5 justice. Fundamental precepts of due process are abrogated when, in order to extract
6 additional punishment from an agreement entered by a defendant, the State increases
7 the punishment by increasing the degree of the offense pled.

8 Respondent may argue that it was never an explicit term of the plea that the
9 Governor would be bound by the prosecutor's and plea court's concession that the
10 offense be designated as second degree murder. What then, was the purpose of the
11 plea bargain? Petitioner, who had insisted on a jury trial and had valid defenses
12 available, did not intend to give the State everything she had fought against to that
13 point. It would be absurd to believe that when a defendant enters into a plea to second
14 degree murder she does so to have her punishment fixed as that contemplated for first
15 degree murder. Please see the recent BPT case of *Brown v. Poole* (9th Cir. 2003) 337
16 F.3d 1155, citing *INS v. St. Cyr* (2001) 533 U.S. 289, 322-323, 325 [inferring based on
17 general analysis of what would motivate defendants to accept plea agreements that
18 particular "defendant 'almost certainly' relied on availability of particular relief"].

19 It was not a term of the plea that a governor would have the power of
20 nullification.⁶ No defendant at the time would have entered such a plea, and defense
21 counsel for such a defendant would have been derelict for not warning the client of the
22 illusory nature of such a "deal," which would betray the District Attorney's ethical
23 duty, as a representative of the state, to conduct the state's business fairly and honestly.
24 See *In re Ibarra* (1983) 34 Cal.3d 277, 289 [illusory concessions offered by state in
25 plea bargain constitute "a species of fraud"]; *Santabello v. New York* (1971) 404 U.S.
26

27
28

⁶ The Governor's authority to modify and reverse BPT parole grants did not exist until 1989, an issue detailed in the following subsection.

1 257, 261 [plea bargain contracts “presuppose fairness in securing agreement between
2 an accused and a prosecutor”].

3 The Governor may argue, as suggested recently in *In re Dannenberg* (2005) 34
4 Cal.4th 1061, that even if the offense must be designated as second degree murder, he
5 must still be able to decide whether it was a particularly egregious example of that
6 offense or whether petitioner’s role was more than the minimum necessary to
7 constitute its elements, and for that reason, deny parole. The notion is tantamount to a
8 claim to unfettered discretion that disrespects the terms of the plea bargain. Further, an
9 inability to define the offense as a more serious, first degree murder, does not deprive
10 the Governor of the use of any of BPT’s other codified factors indicating parole
11 unsuitability; e.g., serious prison misconduct, unviable parole plans, or failure to
12 reform or participate in therapy or other programming.

13 Requiring parole decisions to be based on the crime being second degree murder
14 was the *only* benefit petitioner would receive from her plea. When, as here, the only
15 basis for a Governor’s jurisdiction over petitioner is her plea bargain, contract law and
16 her due process and liberty interest rights compel a Governors’ strict compliance with
17 its terms, which absolutely precluded the actions of Governors Davis and
18 Schwarzenegger that have twice extended her prison term. On this issue, the State’s
19 highest court has explained:

20 It would be improper and unfair to permit the sentencing
21 court to consider any of the facts underlying the dismissed
22 count for purposes of aggravating or enhancing defendant’s
23 sentence. Count three was dismissed in consideration of
24 defendant’s agreement to plead guilty to counts one and two.
25 Implicit in such a plea bargain, we think, is the understanding
26 (in the absence of any contrary agreement) that defendant
27 will suffer no adverse sentencing consequences by reason of
28 the facts underlying, and solely pertaining to, the dismissed
count. (*People v. Barasa* (2002) 103 Cal.App.4th 287, 291,
quoting *People v. Harvey* (1979) 25 Cal.3d 754, 758.)

1 Thus, for at least 25 years it has been held legally untenable to circumvent a plea
2 by using the material the People bargained away against the defendant. The California
3 Supreme Court holds the principle "implicit." The United States Supreme Court also
4 recognizes it. It is implicit in a plea bargain reducing the charge of first degree murder
5 to second degree murder that the indeterminate sentence will not, in actual fact, be
6 based on a representation of the crime as a first degree murder, eliminating all benefit
7 to the defendant from the plea bargain under the guise and expediency of quasi-judicial
8 action by political appointees. The California Supreme Court holds that the State
9 "cannot with one hand give a benefit and with the other take it away." (*People v.*
10 *Harvey, supra*, 25 Cal.3d at p. 758.)

11 Had the prosecutor or trial judge believed that petitioner had acted in a "brutal,"
12 or "premeditated" manner or that her role in the offense amounted to first degree
13 murder, there would have been no plea bargain. *Petitioner's second degree plea*
14 *resulted from the prosecutor's obvious difficulty in proving the elements of first degree*
15 *murder; specifically, that she planned the murder and acted with premeditation.*

16 Because the Governor's action depriving petitioner of parole was based on a
17 nonexistent conviction of a planned, premeditated first degree murder and overtly
18 violated petitioner's plea contract with the State, it must be set aside.

19 It is particularly noteworthy that petitioner has served 13 years in excess of the
20 *maximum* term prescribed for her offense had it resulted in her conviction of *first*
21 *degree* murder. In such a case, the California Supreme Court in *Rosenkrantz*, a second
22 *degree* murder case, warned:

23 [T]here will come a point, which already may have arrived, when
24 petitioner would have become eligible for parole if he had been
25 convicted of first degree murder. Once petitioner reaches that
26 point, it is appropriate to consider whether his offense would still
27 be considered especially egregious for a *first degree* murder in
28 order to promote the parole statute's goal . . . Under this
circumstance, the justification for denying his parole would
become less clear, even under the deferential "some evidence"
standard. (29 Cal.4th at p. 691.)

II. BECAUSE THE GOVERNOR'S FINDING, THAT PETITIONER'S PAROLE POSES "AN UNREASONABLE RISK OF DANGER TO SOCIETY" AND THAT SHE IS THEREFORE UNSUITABLE FOR PAROLE, IS INAPPOSITE TO THE RECORD AND SUPPORTED BY NO EVIDENCE WHATSOEVER, PAROLE REVERSAL ON THAT BASIS ABROGATED DUE PROCESS AND PETITIONER'S LIBERTY INTEREST IN PAROLE.

The Governor's basis for reversing petitioner's parole grant was a boilerplate recitation that her parole poses an "unreasonable threat to public safety if released from prison at this time." (Exhibit C, p. 3.) The sole ground stated by the Governor in support of that conclusion, the commitment offense, is detailed herein. Parole denial on that basis abrogated due process because *no* evidence whatsoever supports the notion that petitioner's parole poses an unreasonable risk and because *all* evidence in the record (which Governor Schwarzenegger did not review) that addresses her current parole risk and potential danger to public safety, assesses these factors as low. Not a speck of evidence supports "the Governor's" contrary recitation.

The only reliable evidence of petitioner's current dangerousness and parole risk, her forensic psychiatric and correctional evaluations, are uniformly parole-favorable and assess these factors to be low. For several years, petitioner has been consistently evaluated to pose a low parole risk. Last year Peter Hu, M.D., a forensic psychiatrist, concluded that petitioner has accepted responsibility for her offense, has appropriate insight and remorse, and would not be dangerous if released to the community. (Exhibit D, p. 3.) Two years earlier, Robert D. McDaniel, M.D., reached the same conclusions (exhibit D, pp. 5-6), as was the case in 1999. (Exhibit D, pp. 13-14.) Petitioner's last three correctional evaluations have likewise concluded that she would pose a low risk to public safety if paroled. (Exhibit D, pp. 3, 6, 14.)

All forensic documentary evidence addressing petitioner's level of danger and parole risk developed over the past 6 years places her in the lowest category. *No* evidence supports Governor Schwarzenegger's contrary notion that petitioner's parole

poses “an unreasonable threat.” Parole reversal based on such a whim abrogated due process and petitioner’s liberty interest in parole. See *In re Smith* (2003) 109 Cal.App. 4th 489, 506-507 [no evidence supporting Governor Davis’ “unreasonable risk” grounds; parole ordered].

III. INVOCATION OF THE UNCHANGEABLE FACTS OF PETITIONER’S COMMITMENT OFFENSE TO INTERMINABLY PRECLUDE HER PAROLE ABROGATES DUE PROCESS

The California Supreme Court in *Dannenberg, supra*, held that the facts of a commitment offense may *in some cases* serve as a ground to deny parole to an otherwise parole qualified inmate. *Dannenberg* did not hold, and cannot tenably be construed to permit the facts of an offense, because they are unchangeable, to serve as in petitioner’s case as a valid basis on which to *interminably* deny her parole, converting her legislatively prescribed, judicially imposed prison term of 15 years to life with the possibility of parole, which Pen.C. § 3041(a) defines as a probability of parole (Board “shall normally set a parole release date”), to life without any possibility of parole. Please see *Biggs, supra*, 334 F.3d at p. 916.

The Ninth Circuit recently reviewed the constitutional propriety of a BPT panel’s use of factors of a first degree murder commitment offense to find a California inmate unsuitable for parole at his *first* hearing. (*Biggs, supra*, 334 F.3d at p. 916.) The Court found no evidence to support most of the panel’s grounds for unsuitability, but held that a particularly egregious commitment offense could be an appropriate basis for finding such a prisoner unsuitable for parole at an *initial* parole hearing. The Ninth Circuit cautioned:

As in the present instance, the parole board’s sole supportable reliance on the gravity of the offense and conduct prior to imprisonment to justify denial of parole can be initially justified as fulfilling the requirements set forth by state law. Over time, however, should *Biggs*

1 continue to demonstrate exemplary behavior and evidence of
2 rehabilitation, denying him a parole date simply because of
3 the nature of Biggs' offense and prior conduct would raise
4 serious questions involving his liberty interest in parole. . . .

5 A continued reliance in the future on an unchanging factor,
6 the circumstances of the offense and conduct prior to
7 imprisonment, runs contrary to the rehabilitative goals
8 espoused by the prison system and could result in a due
9 process violation. (*Biggs*, 334 F.3d at 916-917.)

10 *Biggs'* holding has been relied on in addressing the issue raised by petitioner,
11 most recently in decisions by the U.S. District Courts in California involving repeated
12 unsuitability findings by BPT panels based on the facts of their commitment offense:

13 In finding petitioner unsuitable at this fifth parole suitability
14 hearing, the panel relied exclusively on unchanging factors: the
15 commitment offense and petitioner's drug use at the time of the
16 offense. In *Biggs*, the Ninth Circuit stated that the BPT was
17 "*initially* justified" in finding Mr. Biggs unsuitable based on the
18 circumstances of the offense and conduct prior to imprisonment.
19 334 F.3d at 916 (emphasis added). However, the Ninth Circuit
20 was not specific as to when reliance on the circumstances of the
21 offense and conduct prior to imprisonment would "run contrary to
22 the rehabilitative goals espoused by the prison system" and result
23 in a due process violation. 334 F.3d at 917.

24 More important to the undersigned in assessing any due process
25 violation is the fact that continuous reliance on unchanging
26 circumstances transforms an offense for which California law
27 provides eligibility for parole into a de facto life imprisonment
28 without the possibility of parole. The court asks rhetorically--what
is it about the circumstances of petitioner's crime or motivation
which are going to change? The answer is nothing. The
circumstances of the crimes will always be what they were, and
petitioner's motive for committing them will always be trivial.

Petitioner has no hope for obtaining parole except perhaps that a
panel in the future will arbitrarily hold that the circumstances were

1 not that serious or the motive was more than trivial. Given that *no*
2 *one* seriously contends lack of seriousness or lack of triviality at
3 the present time, the potential for parole in this case is remote to
4 the point of non-existence. Petitioner's liberty interest should not
be determined by such an arbitrary, remote possibility. [FN2]

5 FN2. To a point, it is true, the circumstances of the crime and
6 motivation for it may indicate a petitioner's instability, cruelty,
7 impulsiveness, violent tendencies and the like. However, after
8 fifteen or so years in the caldron of prison life, not exactly an
9 ideal therapeutic environment to say the least, and after repeated
10 demonstrations that despite the recognized hardships of prison,
this petitioner does not possess those attributes, the predictive
11 ability of the circumstances of the crime is near zero.

12 *Irons v. Warden of California State Prison – Solano* (E.D. Ca.
2005) 358 F.Supp.2d 936, 946-947.

13 The Northern District of California likewise held:

14 Now before the Court is petitioner's third denial of parole, which
15 was the first denial based solely on the facts of the crime.
16 Petitioner's present situation falls under the same factual
17 circumstances as *Biggs*, which held that a prisoner's due process
18 rights are not violated the first time parole is denied based solely
on the facts of the crime.

19 Petitioner has subsequently had a fourth hearing in August 2004,
20 in which the BPT again denied parole based on the facts of the
21 crime . . . He is due for his fifth parole hearing in August 2005.

22 A denial based on the unchanging facts of the crime at the August
23 2005 hearing would make it the third time that petitioner is denied
24 parole solely on the basis of the facts of his convicted offense. At
25 that time, petitioner's situation would be more factually similar to
26 the *Irons* case and would more clearly require analysis of the
27 concerns raised in *Biggs*, that continued denial based solely on the
28 facts of the crime can raise serious questions of due process
violations. *Hudson v. Kane* (N.D. Ca. 2005) __ F.Supp.2d __, 2005
WL 2035590 at p. 9.

1 The facts of this case are more compelling than those in *Biggs*, *Irons*, and
2 *Hudson*. Biggs was attending his *first* parole hearing. Petitioner has been imprisoned
3 for 25 years after serving the equivalent of 2½ years in jail. She was eligible for parole
4 *16 years ago* and has served *2 to 2½ times* the minimum and *maximum* terms
5 prescribed by BPT's regulations for her second degree murder and *in excess of her*
6 *prescribed term had the murder been first degree*. She has been repeatedly declared a
7 low parole risk to public safety but remains imprisoned despite being found suitable
8 for parole by two unanimous BPT panels. The prison term prescribed for the facts of
9 her offense, properly set by two panels in compliance with the regulations, including
10 term credits, *lapsed 14½ years ago in 1990*. Petitioner has endured *fourteen* parole
11 denials by BPT panels and governors *based on her commitment offense*.

12 The interminable preclusion of petitioner's parole based on static factors of her
13 offense, converting her prison term to life with no possibility of parole, has abrogated
14 her right to due process and liberty interest in parole, particularly after she has
15 remained imprisoned for 13 years in excess of the maximum term prescribed for those
16 facts and has throughout that time been forensically determined to pose the lower risk
17 to public safety possible.

18
19 **IV. PETITIONER DID NOT RECEIVE DUE, INDIVIDUALIZED, OR ANY**
20 **CONSIDERATION BY GOVERNOR SCHWARZENEGGER, WHO DID NOT**
21 **PERSONALLY REVIEW PETITIONER'S FILES AND THE EVIDENCE**
22 **RELIED ON BY THE PANEL AS REQUIRED, AND BECAUSE THE**
23 **DECISION WAS A BOILERPLATE OF ALL REVERSALS OF PAROLES**
24 **GRANTED BY BPT IN MURDER CASES**

25
26 **1.**

27 BPT's and the Governor's staffs write the "Governor's" decisions, by preparing
28 a list of all conceivably negative facts and non-"facts" concerning the commitment
offense that omit most parole-favorable evidence on which the BPT panel based its

1 decision to grant parole. See exhibit F. The Governor or a designated member of his
 2 staff signs the report but the Governor does not personally review, as required, all or
 3 *any* of the materials reviewed by the BPT panel that granted parole. Governor
 4 Schwarzenegger's only involvement is to sign or designate a staff member to sign the
 5 report. The procedure is overtly devoid of due process and violates the language and
 6 intent of the statute and State Constitution which require that:

8 "[T]he governor, when reviewing the authority's
 9 decision . . . shall review materials provided by
 10 the parole authority . . . if the governor decides
 11 to reverse or modify a parole decision . . . he or
 12 she shall send a written statement to the inmate
 specifying the reasons for his or her decision."
 (Pen.C. § 3041.2.)

13 "The Governor may only affirm, modify, or
 14 reverse the decision of the parole authority on
 15 the basis of the same factors which the parole
 16 authority is required to consider." (Cal.Const.,
 Art.V, § 8(b).)

17
 18 BPT (the "parole authority") "shall" consider "all relevant, reliable information
 19 available to the panel." (15 CCR § 2402(b); *In re Rosenkrantz* (2000) 80 Cal.App.4th
 20 409, 424-427; see *In re Dunham* (1976) 16 Cal.3d 63, 66; *In re Stanley* (1976) 54 Cal.
 21 App.3d 1030, 1038.)

22 § 8(b) of Article V of the California Constitution, quoted above, requires a
 23 governor's decision to be based on the same factors that the hearing panel considered
 24 in arriving at its decision. See *In re Arafles* (1992) 6 Cal.App.4th 1467, 1477, 1479,
 25 1481; also, *Johnson v. Gomez* (9th Cir, 1996) 92 F.3d 964, 967; *In re Ramirez, supra*,
 26 94 Cal.App.4th at pp. 559-560.

27 The current process of rote boilerplate gubernatorial reversals abrogates due
 28 process and reduces gubernatorial review to a sham. The "Governor's" decision is
 legally untenable because Governor Schwarzenegger was not involved in it. It

1 therefore did not provide petitioner with the Governor's individualized consideration
2 of her case or *any* consideration. The action must be set aside because it violates state
3 law and due process. The panel's grant of parole must be reinstated and enforced.

4
5 **2.**

6 A governor's action under Pen.C. § 3041.2 is arbitrary, capricious and denies
7 due process if it is not based on the governor's "individualized consideration" of the
8 case at hand. See *Rosenkrantz*, 29 Cal.4th at p. 677. Governor Schwarzenegger did not
9 give individualized (or *any*) consideration to petitioner's case.

10 "The Governors'" recitations of boilerplate grounds *across-the-board* in all
11 reversals of paroles granted to inmates convicted of second degree murders to
12 characterize *all* second degree murders as "intentional," "deliberate," "premeditated,"
13 and committed with varying degrees of "disregard for human life [suffering]"
14 abrogates due process because the boilerplate format is arbitrary in the extreme, not
15 based on individualized consideration.

16 Review of the Governors' reports to the Legislature for the 6-year period from
17 1999 through 2004 dispels "individualized consideration." The Governors recited
18 identical grounds in all second degree murder reversals. The governors' parole
19 decisions for the 6-year period contained in the Governors' published Annual
20 Executive Reports to the Legislature reveal that Governor Davis reversed 233 of 242
21 paroles granted by BPT in second degree murder cases, that Governor
22 Schwarzenegger has reversed 94 of 146 such grants, and that as grounds for *all* such
23 reversals the Governors listed the gravity and factors of the commitment offenses, *all*
24 of which the Governors characterized as "deliberate" or "premeditated" and/or
25 committed with "exceptionally callous disregard for human suffering [life]." In *every*
26
27
28

1 case the Governor listed the commitment offense as the basis for concluding that the
 2 inmate's parole currently poses an "unreasonable risk of danger" to public safety.⁷

3 Petitioner did not receive individualized consideration or *any* consideration.
 4 Use of the formatted boilerplate language in *all* such cases, including petitioner's, as a
 5 substitute for the Governor's personal review of the documents considered by the
 6 panel that granted parole, to interminably preclude her parole is arbitrary in the
 7 extreme, prohibited by the authorities cited herein, and offensive to due process.

8
 9 **V. THE GOVERNORS' ACTIONS WERE PROHIBITED BY THE EX POST**
 10 **FACTO AND DUE PROCESS CLAUSES OF THE FEDERAL AND**
 11 **CALIFORNIA CONSTITUTIONS**

12 **1. Ex Post Facto**

13 Section 8(b) of Article 5 of the California Constitution and its enabling statute,
 14 Pen.C. § 3041.2, enacted in 1988 authorizing governors to review, modify, and reverse
 15 BPT parole grants in murder cases, are ex post facto when applied to cases like
 16 petitioner's in which the offense occurred prior thereto and *in which gubernatorial*
 17 *jurisdiction is based on a plea bargain contract between the State and the defendant.*

18 In *Rosenkrantz, supra*, 29 Cal.4th 616, the California Supreme Court held the
 19 law not to be ex post facto when applied to a defendant convicted by a trier of fact of a
 20 murder committed prior to its enactment. *Rosenkrantz* is inapplicable and inapposite
 21 to petitioner's case. Unlike the petitioner in *Rosenkrantz*, who at trial defended against
 22 charges of first degree murder, second degree murder, and voluntary manslaughter and
 23 who had no inkling of what his eventual sentence might be nor any voice therein,
 24 petitioner waived her not guilty plea and her right to a trial and further agreed to assist
 25 the prosecution of her codefendants, thereby subjecting herself to years of peril in
 26

27
 28 ⁷ On the Court's request, petitioner will lodge copies of the Annual Reports containing all of the governors' decisions.

1 exchange for a specific sentence, the length of which would be determined solely by
2 the Board of Prison Terms based on her commission of an unpremeditated, unplanned
3 second degree murder according to the laws then in effect.

4 Imposition of a new obstacle to her parole, almost certain gubernatorial reversal,
5 which has extended her prison term interminably, extinguished two valid grants of
6 parole by BPT to date and will always preclude her parole because her offense can
7 never change, constitutes a classic example of ex post facto law. Because the new law
8 is necessarily more onerous to petitioner it is ex post facto. (U.S.Const., Art.I, §10;
9 Cal.Const., Art.I, §9; *Miller v. Florida* (1987) 482 U.S. 423, 428-432; *Weaver v.*
10 *Graham* (1982) 450 U.S. 24, 28-31; *Weaver v. Maas* (9th Cir, 1995) 53 F.3d 956, 959 ;
11 *Fleming v. Oregon Board of Paroles* (9th Cir, 1993) 998 F.2d 721, 725; *In re*
12 *Stanworth* (1982) 33 Cal.3d 176, 180, 187-188.)

13 Petitioner, to establish an ex post facto violation, need not prove that she is
14 necessarily serving a longer prison term due to the new law than would have been the
15 case had it not been enacted (*Miller v. Florida, supra*, 482 U.S. at p. 432; *Fleming v.*
16 *Oregon Board of Paroles, supra*, 998 F.2d at pp. 723-725), although that is the case
17 here, a case that amply satisfies her obligation to establish that application of the
18 new law to her case created a “**significant risk** of increasing her punishment.” See
19 *Garner v. Jones* (2000) 529 U.S. 244, 256. The new gubernatorial obstacle in fact
20 **necessarily** works to her detriment and can **not** work to her benefit. See *Nulph v.*
21 *Faatz* (9th Cir, 1994) 27 F.3d 451, 456.

22 Accordingly, Governors Davis and Schwarzenegger violated petitioners right
23 secured by the Ex Post Facto Clauses of the Federal and State Constitutions in
24 reversing two valid grants of parole by means of a new, more onerous law enacted
25 after she entered into a plea contract with the State to have her prison sentence for
26 second degree murder determined solely by BPT as provided by the laws then in force.
27
28

2. Due Process

Application of Pen.C. § 3041.2 (Cal.Const., Art.5, §8(b)) to individuals like petitioner who entered into guilty plea contracts prior to its enactment violates the Due Process Clauses of the Federal and State Constitutions.

Petitioner gave the State the substantial benefit of a murder conviction, without costly, protracted proceedings, and extensive personal testimony permitting the State to secure two first degree murder convictions, by waiving all defenses and convicting herself by a plea of guilty. Central to the plea contract was petitioner's reliance on the condition that she would be released on parole once she served her minimum term for second degree murder, met the suitability criteria, and was therefore found suitable for parole by BPT. The State's courts and prosecutors are well aware of and rely on the fact that when defendants enter into pleas to murder they are focused on and motivated by the prospect of parole pursuant to the process then in place. See *Brown v. Poole*, *supra*, 337 F.3d 1155, citing *INS v. St.Cyr*, *supra*, 533 U.S. at pp. 322-323.

It cannot be denied that application of Pen.C. § 3041.2 to preclude petitioner's parole interminably has extinguished the consideration the State gave for her plea bargain. Petitioner had a vested right in the parole determination procedure in place at the time of her plea because it is what the State promised in exchange for the valuable consideration, an expedient cost efficient conviction, and a means to procure two additional convictions that she supplied with a guilty plea. (*Newton v. Rumery*, *supra*, 480 U.S. at p. 394.) When the state nullifies the benefit of a bargain after the fact, it perpetrates "a species of fraud." See *In re Ibarra*, *supra*, 34 Cal.3d at p. 289. A party of a plea agreement is entitled to enforce it when deprived of its benefits. Failure to hold a party to its terms "would undermine the integrity of the judicial process." See *People v. Vargas* (2001) 91 Cal.App.4th 506, 533-534, citing *People v. Collins*, *supra*, 45 Cal.App.4th at pp. 863-864.

1 Although *Rosenkrantz, supra*,⁸ 29 Cal.4th at p. 640, defeated an ex post facto
 2 claim⁹ by labeling the new gubernatorial power “merely” “an additional level of
 3 discretionary review,” that definition *defines* a due process violation under these
 4 circumstances. Because a plea agreement is a binding contract, it is unacceptable for
 5 the State to reap the “benefit of the[] plea agreement” and then impose “significant
 6 and manifest” detriments on the defendant retroactively. That “would surely be
 7 contrary to familiar considerations of fair notice, reasonable reliance, and settled
 8 expectations [because it] clearly attaches a new disability, in respect to transactions or
 9 considerations already past.” See *INS v. St. Cyr, supra*, 150 L.Ed.2d at pp. 375-378. It
 10 matters not that parole decisions are discretionary; the United States Supreme Court’s
 11 holdings in *St. Cyr* were made in the context of a similarly discretionary benefit.

12
 13 Even if the voters intended the new gubernatorial authority to be retrospective,
 14 its impact on existing plea bargains was not contemplated. Because the principle of
 15 the above cited Supreme Court cases is controlling, the Governors’ power may only be
 16 applied to individuals who were convicted by a trier of fact before its passage or who
 17 committed their offenses after its passage.¹⁰ Its application to reverse petitioner’s
 18 grants of parole abrogated her right to due process and liberty interest in parole.
 19
 20
 21
 22

23
 24 ⁸ The validity of *Rosenkrantz* has been cast into doubt given the United States Supreme Court’s decision in *Stogner v.*
 25 *California* (2003) 156 L.Ed.2d 544, that disapproved the California Supreme Court’s “too narrow” ex post facto position
 in *People v. Frazer* (1999) 21 Cal.4th 737, on which *Rosenkrantz* relied that labeled statutory changes “procedural only”
 rather than addressing their impact on fundamental fairness.

26 ⁹ As detailed in a previous section, *Rosenkrantz*’ ex post facto analysis of the impact of the new statute on a defendant
 27 convicted by a trier of fact of an offense committed prior to its enactment is inapplicable to a plea bargain for a specific
 term, sentence, and parole determination.

28 ¹⁰ Petitioner claims separately that even if her plea bargain had been contracted after enactment of the new law, the
 Governors’ decisions in her case would have violated due process and contract law because they were based on re-
 characterization of her offense as a premeditated first degree murder.

CONCLUSION; RELIEF REQUESTED

Having set forth a prima facie case for relief, petitioner respectfully requests issuance of an order to show cause, and after briefing by the parties based on the foregoing authorities, issuance of a writ of habeas corpus vacating the Governor's action of October 11, 2004, that reversed BPT's second grant of parole, reinstating BPT's decision of May 17, 2004, releasing petitioner on parole on the date calculated therein, and ordering CDCR to credit her parole term with the number of days of her prison confinement in excess of her prison term calculated by BPT, after deducting applicable statutory and regulatory postconviction credit.


ADDENDUM

Petitioner respectfully calls the Court's attention to a newly published, relevant case, *In re Scott* (2005) __ Cal.App.4th __, 2005 WL 2651154, in which the Fifth Appellate District properly applied the "some evidence" standard of review and addressed the issue of repeated parole denial based on commitment offenses.

1 Dated

10-31-05

2
3
4 Respectfully submitted,

5
6
7
8 
9 Adrian T. Woodward
10 Counsel for Petitioner
11
12
13
14

15 **VERIFICATION**

16
17 I declare, under penalty of perjury, that the facts set forth above are

18 Dated 10-31-05, at Long Beach, California.
19
20
21


22 
23 Declarant
24
25
26
27
28

TABLE OF EXHIBITS

Exhibit A Abstract of Judgment

Exhibit B Certified transcript, May 17, 2004 parole hearing

Exhibit C Governor's reversal decision, October 11, 2004

Exhibit D Petitioner's psychological (forensic) evaluations

Exhibit E Petitioner's correctional evaluation

Exhibit F Communications regarding BPT's "Executive Summaries"

Exhibit G Monterey County Superior Court order denying habeas corpus petition

EXHIBIT A

**SUPERIOR COURT OF CALIFORNIA COUNTY OF MONTEREY
ABSTRACT OF JUDGMENT**

(Commitment to State Prison)

The People of the State of California,
PLAINTIFF,

VS

BRANDEE TRIPP,
DEFENDANT.

Present: Ralph H. Drummond
Hon. JUDGE OF THE SUPERIOR COURT

James T. O'Farrell/Gregory Jacobson
DISTRICT ATTORNEY

Frank Dice
COUNSEL FOR DEFENDANT

This certifies that on 2/11/81 Judgment of conviction of defendant was entered as follows:

(1) Case No. CR 7639 Count No. 3 On his plea of GUILTY

he was convicted by the Court of violation of Section 187 of the Penal Code,

murder in the second degree, a felony

with prior felony convictions as follows: NONE

Date	County and State	Crime	Disposition

Defendant has been held in custody for 875 days as a result of the same criminal act or acts for which he has been convicted.

Defendant was not armed with a deadly weapon at the time of his commission of the offense or a concealed deadly weapon at the time of his arrest within the meaning of Penal Code Sections 969c, 3024.

Defendant was not armed with a deadly weapon at the time of his commission of the offense within the meaning of Penal Code Sections 969c, 12022.

Defendant did not use a firearm in his commission of the offense within the meaning of Penal Code Sections 969d, 12022.5.

(2) Defendant was not adjudged an habitual criminal within the meaning of Subdivision a or b of Section 644 of the Penal Code, and the Defendant is not an habitual criminal in accordance with provisions of Subdivision (c) of that section.

(3) IT IS THEREFORE ORDERED, ADJUDGED AND DECREED that the defendant be punished by imprisonment in state prison of the state of California for the term provided by law and that he be remanded to the Sheriff of the County of Monterey, and by him delivered to the Director of Corrections of the State of California at California Institute for Women, Frontera

It is ordered that sentences shall be served in respect to one another as follows: N/A

and in respect to any prior uncompleted sentence(s) as follows: N/A

(4) To the Sheriff of the County of Monterey and to said Director of Corrections:

Pursuant to the aforesaid judgment, this is to command you, the said Sheriff, to deliver the above named defendant into custody of Director of Corrections at the Facility above named, at your earliest convenience.

Witness my hand and seal of said court

ERNEST A. MAGGINI, Clerk

on February 11, 1981

By Beverly Clausen
Deputy

I do hereby certify the foregoing to be a true and correct abstract of the judgment duly made and entered on the minutes of the Superior Court in the above entitled action as provided by Penal Code Section 1213.

Attest my hand and seal of the said Superior Court on February 11, 1981

ERNEST A. MAGGINI, County Clerk and Clerk of the Superior Court of California for the County of Monterey.

Ralph H. Drummond
Judge of the Superior Court of the State of California for the County of Monterey

By Beverly Clausen
Deputy

EXHIBIT B

SUBSEQUENT PAROLE CONSIDERATION HEARING
STATE OF CALIFORNIA
BOARD OF PRISON TERMS

In the matter of the Life)
Term Parole Consideration)
Hearing of:)

BRANDEE TRIPP)
_____)

CDC Number W-15695

COPY

INMATE

CALIFORNIA INSTITUTION FOR WOMEN
CORONA, CALIFORNIA

MAY 17, 2004

1:50 P.M.

**PENDING REVIEW
AND APPROVAL**

PANEL PRESENT:

KEN RISEN, Presiding Commissioner
HERBERT MAY, Deputy Commissioner

OTHERS PRESENT:

BRANDEE TRIPP, Inmate
ADRIAN WOODWARD, Attorney for Inmate

CORRECTIONS TO THE DECISION HAVE BEEN MADE

No
Yes

See Review of Hearing
Transcript Memorandum

Matthew Yates

Capitol Electronic Reporting

INDEX

	<u>Page</u>
Proceedings	1
Case Factors	10
Pre-Commitment Factors	23
Post-Commitment Factors	29
Parole Plans	38
Closing Statements	59
Recess	64
Decision	65
Adjournment	71
Transcriber Certification	72

P R O C E E D I N G S

DEPUTY COMMISSIONER MAY: On record.

PRESIDING COMMISSIONER RISEN: This is a Subsequent Parole Consideration Hearing for BranDee B-R-A-N-D-E-E Tripp, T-R-I-P-P. CDC number is W-15695. Today's date is May the 17th, 2004. The time is 1:50 P.M. here at the CIW Boardroom, California Institute [sic] for Women. Prisoner's legal status: She was received 2/18 of '81 from Monterey County. The offense is murder second, case number CR7639. Count number three, 187 of the Penal Code. Term is 15 years to life. Minimum eligible parole date is 5/6 of 1989. This hearing is being tape recorded. For purposes of voice identification, we need to go around the room and identify ourselves. Please state your name. Spell your last name. And in addition to spelling your last name, we need the inmate to give her CDC number. Go to my left. My name is Ken Risen, R-I-S-E-N, Commissioner.

DEPUTY COMMISSIONER MAY: Herbert May, M-A-Y, Deputy Commissioner.

ATTORNEY WOODWARD: Adrian Woodward, W-O-O-D-W-A-R-D, Ms. Tripp's Attorney. Your turn.

INMATE TRIPP: BranDee Tripp, T-R-I-P-P, W-15695.

PRESIDING COMMISSIONER RISEN: Okay. We also

1 have one correctional peace officer in the room.
2 She will not be participating in the hearing. She
3 is here for security purposes. Ms. Tripp, your
4 first name is spelled Bran, B-R-A-N-capital D-E-E,
5 isn't it?

6 INMATE TRIPP: Yes, Sir.

7 PRESIDING COMMISSIONER RISEN: Okay. Now,
8 you filled out a form 1073, which is our Americans
9 With Disability Act form. This was done on March
10 15th, 2004 and at that time, you indicated you did
11 not have a disability. Is that correct?

12 INMATE TRIPP: Yes, Sir.

13 PRESIDING COMMISSIONER RISEN: Okay. What I
14 need you to do is to read that ADA statement there
15 in front of you.

16 INMATE TRIPP: "The Americans With
17 Disability Act, ADA, is a law to help
18 people with disabilities.
19 Disabilities are problems that make
20 it harder for some people to see,
21 hear, breathe, talk, walk, learn,
22 think, work, or take care of
23 themselves than it is for others.
24 Nobody can be kept out of public
25 places or activities because of a
26 disability. If you have a
27 disability, you have the right to ask

1 for help to get ready for your BPT
2 hearing, get to the hearing, talk,
3 read forms and papers, and understand
4 the hearing process. BPT will look
5 at what you've asked for to make sure
6 that you have a disability that is
7 covered by the ADA and that you have
8 asked for the right kind of help. If
9 you do not get help, or if you do not
10 think you got the kind of help you
11 need, ask for a BPT 1074 Grievance
12 form. You can also get help to fill
13 it out."

14 **PRESIDING COMMISSIONER RISEN:** Thank you.
15 Now, do you have any problems walking up and down
16 stairs or over a distance of more than 100 yards?

17 **INMATE TRIPP:** No, Sir.

18 **PRESIDING COMMISSIONER RISEN:** Do you need
19 glasses or a magnifying device to see or read
20 documents?

21 **INMATE TRIPP:** Well, I'm waiting for
22 glasses, but it's for distance. It's not for
23 reading.

24 **PRESIDING COMMISSIONER RISEN:** Okay. Do you
25 have any hearing impairments?

26 **INMATE TRIPP:** No, Sir.

27 **PRESIDING COMMISSIONER RISEN:** Do you take

1 any medication?

2 INMATE TRIPP: (Inaudible.)

3 PRESIDING COMMISSIONER RISEN: Any
4 medication that might interfere with your
5 participation in the hearing?

6 INMATE TRIPP: No, Sir.

7 PRESIDING COMMISSIONER RISEN: Have you ever
8 been classified as Triple CMS or EOP?

9 INMATE TRIPP: No, Sir.

10 PRESIDING COMMISSIONER RISEN: How far did
11 you go in school on the street?

12 INMATE TRIPP: I went to the 10th or 11th
13 grade. I got kicked out and then I went to
14 continuation and finished.

15 PRESIDING COMMISSIONER RISEN: Okay. So do
16 you have a high school equivalency or a GED?

17 INMATE TRIPP: I have both.

18 PRESIDING COMMISSIONER RISEN: Were you ever
19 placed in special education classes or classes for
20 slow learners?

21 INMATE TRIPP: No, Sir.

22 PRESIDING COMMISSIONER RISEN: Okay. The
23 Panel will find that the prisoner has no disability
24 as defined under the Americans With Disability Act.
25 Would you agree, Counsel?

26 ATTORNEY WOODWARD: I agree.

27 PRESIDING COMMISSIONER RISEN: Okay. The

1 purpose of today's hearing is to again consider
2 your suitability for parole. In arriving at a
3 decision, we will consider the commitment offense,
4 your prior criminality and social history, as well
5 as your behavior and overall programming since your
6 commitment. We have reviewed your files and prior
7 transcripts. You will have an opportunity to make
8 corrections and clarifications regarding the
9 records. We will probably read into the record
10 Statement of Facts as reflected by the record. We
11 will then directly go to your progress since your
12 last hearing, referring to new psychiatric reports,
13 and any other information that has a bearing on
14 your parole suitability. Any additional parole
15 plans should be brought to our attention. The
16 prisoner's attorney and the prisoner will be given
17 an opportunity to make a statement regarding parole
18 suitability and length of confinement. After this
19 is done, we will recess, clear the room, and
20 deliberate. Once we've reached our decision, we'll
21 resume the hearing and announce the decision. The
22 prisoner is afforded certain rights, timely notice
23 of this hearing today, availability to review the
24 Central File, the right to present relevant
25 documents at this hearing, the right to an
26 impartial Panel. Is the prisoner's attorney
27 satisfied these rights are met?

1 **ATTORNEY WOODWARD:** Yes.

2 **PRESIDING COMMISSIONER RISEN:** The prisoner
3 will receive a copy of a tentative written decision
4 today. That decision becomes effective upon
5 approval by the Decision Review Unit at the Board
6 of Prison Terms. Later, you will receive a
7 transcript and a copy of the decision. It's
8 automatically sent to you. As of May 1st, 2004,
9 there was a major change limiting your right to
10 appeal. The Board of Prison Terms no longer accept
11 appeals. You have to appeal directly to the
12 courts. And apparently, that information is
13 contained in the prison law library and there's
14 (inaudible) in the Administrative Appeals
15 correspondence, grievance concerning Board of
16 Prison Term decisions. It's administrative
17 directory AD 4 slash 01. Okay, today you will not
18 be required to discuss the commitment offense with
19 the Panel, and you will not be required to admit
20 the commitment offense. However, the Panel accepts
21 as true the Court findings. Any confidential
22 materials?

23 **DEPUTY COMMISSIONER MAY:** There will be
24 none, Mr. Chairman, thank you.

25 **PRESIDING COMMISSIONER RISEN:** Okay. Any
26 additional documents for us to review today?

27 **ATTORNEY WOODWARD:** As requested, have the

1 Chairpersons had an opportunity to read the brief
2 submitted by my office? Because I was afraid --
3 it's not in front of you.

4 **PRESIDING COMMISSIONER RISEN:** Where?
5 Where? I didn't see it.

6 **ATTORNEY WOODWARD:** I didn't see it in front
7 of you and it was submitted.

8 **PRESIDING COMMISSIONER RISEN:** Nope.

9 **ATTORNEY WOODWARD:** So I'm a little
10 concerned.

11 **PRESIDING COMMISSIONER RISEN:** I was going
12 to say I have two documents, one letter from the
13 archdiocese and a letter from someone else. So I
14 only have those two letters. Are there more than
15 that?

16 **ATTORNEY WOODWARD:** Yes. There's additional
17 documentation from a prospective employer. There's
18 documentation from a conversion to a controlled
19 halfway house, (inaudible). I can submit copies to
20 this Board presently.

21 **DEPUTY COMMISSIONER MAY:** You want to do
22 that right now?

23 **ATTORNEY WOODWARD:** My only concern is that
24 the brief is --

25 **DEPUTY COMMISSIONER MAY:** Do you have a copy
26 of it?

27 **ATTORNEY WOODWARD:** I do.

1 DEPUTY COMMISSIONER MAY: (Inaudible.) Is
2 that a copy of your (inaudible)?

3 ATTORNEY WOODWARD: These are the two copies
4 of an indication from Casanova and your prospective
5 employer.

6 DEPUTY COMMISSIONER MAY: Okay. Great.
7 That's really cool.

8 ATTORNEY WOODWARD: Absolutely. I don't
9 think the Chairman will have an opportunity to read
10 this. Mind if we take a brief recess for you?

11 PRESIDING COMMISSIONER RISEN: Okay, in a
12 moment, we'll take a recess and I'll read them.

13 ATTORNEY WOODWARD: Yeah.

14 PRESIDING COMMISSIONER RISEN: I have a
15 hearing check -- No, why don't we finish this so I
16 don't forget where we're at.

17 ATTORNEY WOODWARD: Yes, I apologize. These
18 are also two letters, one from two family members
19 that are supportive of her release.

20 PRESIDING COMMISSIONER RISEN: Okay, so four
21 letters and a brief? Okay, I have a checklist of
22 documents contained in my file. I've marked it
23 Exhibit One. I'd like you to look at it to ensure
24 that you have those documents. Also, do you have
25 this letter from the Arroyo Grande Police
26 Department?

27 ATTORNEY WOODWARD: No. That was never --

1 We have (inaudible) type concerns. We never
2 received a notification from (inaudible).

3 **PRESIDING COMMISSIONER RISEN:** I'm sure it's
4 basically the same as it said last time. Almost
5 word for word.

6 **ATTORNEY WOODWARD:** Okay. Thank you. I
7 believe I'm aware of the documentation of
8 (inaudible), I'm sure.

9 **PRESIDING COMMISSIONER RISEN:** Okay. Any
10 objections at this time? Are they in the brief?

11 **ATTORNEY WOODWARD:** The objections are not
12 in the brief. My only concern is the brief is a
13 relevant document and as long as the gentleman --
14 Mr. Risen, you indicate that you're going to --
15 Excuse me, Risen -- read the brief. It's relevant,
16 and so that's my only concern.

17 **PRESIDING COMMISSIONER RISEN:** Okay. I will
18 read it in just a moment, then. At this point,
19 we'll go to recess. The time is 2:04 and we'll
20 call you back in in a few minutes.

21 **ATTORNEY WOODWARD:** Thank you. I understand
22 and appreciate.

23 [Off the record.]

24 **DEPUTY COMMISSIONER MAY:** We're back on
25 record.

26 **PRESIDING COMMISSIONER RISEN:** Okay, we'll
27 resume the hearing. We have read the Counsel's

10

1 brief and we do have copies of them. The time is
2 2:20. At this point, is the prisoner going to
3 address the Panel today?

4 **ATTORNEY WOODWARD:** Yes.

5 **PRESIDING COMMISSIONER RISEN:** Could you
6 raise your right hand, please? Best you can. Do
7 you solemnly swear or affirm that the testimony you
8 give at this hearing will be the truth, the whole
9 truth, and nothing but the truth?

10 **INMATE TRIPP:** I do.

11 **PRESIDING COMMISSIONER RISEN:** Okay. I'm
12 going to read the Statement of Facts from the
13 summary of the crime in the June, 2004 Board
14 report.

15 "On July 8th of 1979, the victim's
16 mother reported her daughter missing
17 and indicated William Ruckert,
18 parenthesis, BranDee Tripp's
19 stepfather parenthesis, might be
20 involved in the disappearance of her
21 daughter. The victim was scheduled
22 to testify against Mr. Ruckert in a
23 child molestation case. Subsequent
24 investigation led Jon Sorenson to
25 reveal knowledge of a conspiracy to
26 kidnap the child by Mr. Ruckert and
27 Mr. Hilton Tripp, T-R-I-P-P,

11

1 parenthesis, Mrs. Tripp's husband,
2 close parenthesis. Roger Ladd
3 indicated Mr. Ruckert offered him
4 \$1,000 to kidnap the victim's older
5 sister Betty Ann Murdock. He
6 observed Hilton Tripp, Randy Cook,
7 and BranDee Tripp discussing methods
8 of killing the older sister. Mr.
9 Ladd also observed further
10 discussions of methods of kidnapping
11 and killing Tamron Carpenter by
12 Hilton and BranDee Tripp. On July
13 9th, 1979, Hilton Tripp implicated
14 Randy Cook as the person who killed
15 the victim and acknowledged he
16 assisted in burying the child. He
17 stated his wife BranDee was in
18 agreement with the kidnapping and
19 arranged for the child to leave the
20 home in order to facilitate the
21 event. The body of the victim was
22 found buried near Avila Beach, A-V-I-
23 L-A. Ms. Tripp was arrested on July
24 10th, 1979."

25 Okay. Would you like to make any corrections or
26 clarifications regarding this crime?

27 **INMATE TRIPP:** Well, some of the things in

1 there I really don't remember happening. I mean, I
2 didn't know that Roger Ladd was approached. I was
3 always been under the impression that we brought
4 him into the mess. Because I was staying at his
5 trailer and my ex-husband, now, found me when we
6 were discussing everything which involved Roger,
7 but I don't remember him being directly involved as
8 far as that version. I always thought we
9 implemented him just by -- I mean, just by being in
10 his area.

11 **PRESIDING COMMISSIONER RISEN:** Okay, were
12 you -- Okay, let me ask you this. Now, were you
13 ever present when there was a conversation between
14 Ruckert, yourself, and someone else to kidnap the
15 older sister and kill her?

16 **INMATE TRIPP:** Well, it was a while ago. It
17 was a few Board hearings ago. And at the time,
18 they didn't really care to know and -- What
19 happened at the time is me and Randy went with
20 Hilton to talk to my stepfather. But me and Randy
21 had to sit in the car, and that would be Cook.
22 That would be Mr. Cook. And we watched Hilton talk
23 to my stepfather on the front of our grass where my
24 mom's house is. That was when he was staying -- He
25 was being allowed to go there to get his clothes at
26 the time. And we watched the conversation, but we
27 never really heard the conversation. But when it

13

1 came to testifying to them, I perjured myself and
2 said I heard everything. And I just repeated what
3 my husband told me because I didn't think that my
4 stepfather should be the only one not going
5 anywhere.

6 **PRESIDING COMMISSIONER RISEN:** Okay.

7 **ATTORNEY WOODWARD:** I think -- necessary to
8 clarify that for me is that -- I think what Ms.
9 Tripp is indicating at the trial for Mr. Ruckert,
10 she was primary state's witness against him. Had
11 she not testified, it's quite probable he would
12 have been exculpated, I think. Because they
13 couldn't find -- So she perjured herself to convict
14 Mr. Ruckert and become the star witness against Mr.
15 Ruckert in the subsequent (inaudible) convicted of
16 first degree.

17 **PRESIDING COMMISSIONER RISEN:** Okay. Does
18 that mean that her husband Hilton never testified
19 against Ruckert?

20 **INMATE TRIPP:** Not to my knowledge. I was
21 the last one that they ever seen.

22 **PRESIDING COMMISSIONER RISEN:** Okay.

23 **INMATE TRIPP:** Out of the -- There was four
24 of us. I was the last. That would have went to
25 trial if I hadn't pled guilty.

26 **PRESIDING COMMISSIONER RISEN:** Okay, now the
27 first one they were going to kidnap was -- and

1 according to someone, murder -- would be the older
2 sister. What was her name?

3 INMATE TRIPP: Betty Ann Maddox.

4 PRESIDING COMMISSIONER RISEN: Okay. What
5 ever happened to her?

6 INMATE TRIPP: Okay. He came with this
7 wonderful idea. I wasn't real thrilled. And in my
8 mind at the time, I didn't really think I was
9 participating in murder. And they did discuss
10 murder and they were smoking a joint and they were
11 talking, just like, bizarre, and I told them, I'm
12 not helping you with any murder. I'll get her out
13 of the house. If you want to do what you're going
14 to do, you can do it.

15 PRESIDING COMMISSIONER RISEN: Okay.

16 INMATE TRIPP: But I'll get her out of the
17 house. But when I went to get her out of the
18 house, they stayed in the bushes and nobody did
19 anything. So she went back to her home, so nothing
20 ever happened to her.

21 PRESIDING COMMISSIONER RISEN: So we're
22 talking about the older sister?

23 INMATE TRIPP: That's the older sister.

24 PRESIDING COMMISSIONER RISEN: Okay. Now,
25 how were you involved in the younger sister's
26 kidnapping?

27 INMATE TRIPP: In the beginning, I was

15

1 actually running interference with her. Because
2 they were talking and they wanted to kill her. I
3 didn't want to kill her. I didn't want to help
4 kill her. I didn't think she needed to be dead,
5 and I didn't want to do it. And so, we'd set up
6 little plans and they'd kind of just casually fall
7 through. And it wouldn't work, and I'd take Tammy
8 home and we'd go places, and I'd take Tammy home.
9 Well, the day that this happened, before it
10 happened, my husband promised me that no one would
11 get hurt. He promised me that he would go pick
12 Tammy up if I sent her down to the store. I could
13 go to Randy's house and watch her, and they would
14 go convince my stepfather that they kidnapped her
15 and she wouldn't be testifying to get the money.
16 And then we were going to let her go.

17 **PRESIDING COMMISSIONER RISEN:** And you were
18 supposed to be at Randy Cook's house?

19 **INMATE TRIPP:** Yeah.

20 **PRESIDING COMMISSIONER RISEN:** The trailer.

21 **INMATE TRIPP:** So after she came up -- No, I
22 was supposed to be -- He lived with his girlfriend
23 in a house in Arroyo Grande. So I went after her
24 mom called, I went to Randy's house and I waited
25 and I waited and I waited. And in my head, I knew
26 something wasn't going right, but I was afraid to
27 leave, because I was afraid if I wasn't where I was

16

1 supposed to be and something happened to her, then
2 it was my fault. And that's how I thought when I
3 was --

4 PRESIDING COMMISSIONER RISEN: Okay. Now
5 how did Tamron Carpenter, the victim, know you?

6 INMATE TRIPP: He --

7 PRESIDING COMMISSIONER RISEN: She.

8 INMATE TRIPP: They were a friend of my
9 stepdad's for years and I met them through my
10 stepfather for years.

11 PRESIDING COMMISSIONER RISEN: Did you watch
12 them? Were you like a caretaker?

13 INMATE TRIPP: Well, no. We never
14 babysitted, but her older sister, Betty Ann, was my
15 best friend.

16 PRESIDING COMMISSIONER RISEN: The one --

17 INMATE TRIPP: The older one.

18 PRESIDING COMMISSIONER RISEN: The older
19 one.

20 INMATE TRIPP: Maddox.

21 PRESIDING COMMISSIONER RISEN: Okay. But
22 Tamron knew you well.

23 INMATE TRIPP: Yeah.

24 PRESIDING COMMISSIONER RISEN: So if you
25 went to Randy Cook's house and held her there, how
26 -- Once you ultimately got away, how would you not
27 be identified?

1 **PRESIDING COMMISSIONER RISEN:** Probably.

2 **INMATE TRIPP:** I would have called the
3 police. I did try to call the police once or
4 twice, but I got scared. When they picked up the
5 phone, I hung up. And I called from a payphone.
6 And now that I'm older, I know that I knew at the
7 time something wasn't right. Or I wouldn't be
8 trying to call the police.

9 **PRESIDING COMMISSIONER RISEN:** Okay. What
10 you're saying, then, is on July 8th, '79, when they
11 didn't bring the girl to you, you knew something
12 was wrong. And so you tried to call the police?

13 **INMATE TRIPP:** I tried twice and I got
14 scared and I hung up the phone as soon as he
15 answered. I was at a payphone in old Arroyo Grande
16 by this bridge. And I hung up the phone. I never
17 talked to anyone because I got scared. In my head,
18 I was thinking, well, if I'm not there and they
19 show up, what happens if they take things into
20 their own hands?

21 **PRESIDING COMMISSIONER RISEN:** Okay, now,
22 she knew both Hilton and Randy Cook? Hilton Tripp?

23 **INMATE TRIPP:** I'm not sure if she really
24 knew Randy really well, but she knew Hilton because
25 he was with me most of the time.

26 **PRESIDING COMMISSIONER RISEN:** Okay. And
27 you sent her to the store near Avila Beach?

1 **INMATE TRIPP:** No. I sent her down -- The
2 store was, like, right down from her house. But
3 they were parked down there waiting.

4 **PRESIDING COMMISSIONER RISEN:** Did you
5 ever --

6 **INMATE TRIPP:** They (inaudible) up on a hill
7 and the store was right --

8 **PRESIDING COMMISSIONER RISEN:** Okay. You
9 were arrested two days later. Did you ever talk to
10 Hilton and Randy?

11 **INMATE TRIPP:** No. No. What actually
12 happened is they picked me up for questioning. I
13 denied the whole thing. I acted like I didn't know
14 anything. And they held me. And at the time, I
15 guess it was 23 hours. They can hold you 23 hours
16 and they have to let you go if they're not going to
17 arrest you. And during that time, Hilton had came
18 into the police department looking for me. And
19 they ended up picking him up because he had a
20 juvenile warrant for him for a prior conviction.
21 And they let me go and then I think I got arrested
22 the next day. I think it was the next day early
23 morning. I mean, I went through a whole day and
24 then they woke me up out of a dead sleep, so it
25 was, like, two days later, the following morning.
26 But it was, like, within a 24 hour period
27 (inaudible).

1 the area.

2 **PRESIDING COMMISSIONER RISEN:** Well, how
3 would you handle a situation like that today?

4 **INMATE TRIPP:** If I heard anyone
5 conspiracizing about any kind of awful thing, I
6 would call the police within a minute. I would
7 have no problem turning anyone in today. Because
8 when I was young, you think, no, they're really not
9 going to do it. You know, people always talk and
10 it's like, they really don't mean it. I wouldn't
11 take that chance. Because what if they do mean it.
12 You know. Tammy's gone, and it is my fault.
13 Because she would have never went down to the
14 store. You know, and they may have not have done
15 anything if I hadn't helped, but I wouldn't have
16 helped if they hadn't promised me that she wouldn't
17 have got hurt. The reason it took so long --

18 **PRESIDING COMMISSIONER RISEN:** Then your
19 motivation was you wanted the \$1,000?

20 **INMATE TRIPP:** Well, I wanted to burn my
21 stepfather. I wanted to pay him back for
22 everything that I went through with him.

23 **PRESIDING COMMISSIONER RISEN:** And how did
24 you plan to do that?

25 **INMATE TRIPP:** When he gave us the money, we
26 were going to turn Tammy loose and let her testify.
27 We weren't going to keep her. We were going to let

1 her do what she needed to do. Because we knew he
2 wouldn't -- The one thing we did know is he would
3 never turn us in. Because what would he say. You
4 know, he couldn't turn us in. And I don't remember
5 who put that knowledge in our head, but we knew
6 that for a fact that he wouldn't turn us in. So if
7 he gave us the money, there was nothing he could do
8 if Tammy showed up to testify.

9 **PRESIDING COMMISSIONER RISEN:** Okay, but it
10 was \$1,000.

11 **INMATE TRIPP:** Well, they said 1,000. I was
12 told 10,000, so I'm not really sure because I never
13 really heard -- The only thing I heard was what
14 Hilton ever told us.

15 **PRESIDING COMMISSIONER RISEN:** Okay, now
16 let's go over your pre-conviction factors. Says
17 you have no juvenile record.

18 **INMATE TRIPP:** No, I don't have (inaudible).

19 **PRESIDING COMMISSIONER RISEN:** Okay. Now,
20 in the Governor's letter, he said that in the '85,
21 '91, and '93 psych evaluation, you talked about
22 shoplifting as a juvenile. Did you do that?

23 **INMATE TRIPP:** I was a delinquent at times,
24 but I never got arrested for it.

25 **PRESIDING COMMISSIONER RISEN:** Okay. Then
26 you stole cars.

27 **INMATE TRIPP:** I stole two cars to run away

1 with.

2 PRESIDING COMMISSIONER RISEN: Okay. And
3 then you stole money from your parents?

4 INMATE TRIPP: I did steal money from my
5 mom.

6 PRESIDING COMMISSIONER RISEN: Back to the
7 commitment offense. Was there any drugs or alcohol
8 on your part? Were you using drugs or under the
9 influence of alcohol?

10 INMATE TRIPP: When we were talking about
11 Betty Ann, we were smoking weed. We were pretty
12 loaded.

13 PRESIDING COMMISSIONER RISEN: Okay, but on
14 the --

15 INMATE TRIPP: But I don't remember doing
16 drugs or alcohol at the time when Tammy -- I really
17 tried to talk them out of it and why I didn't call
18 the cops -- At that age, that young. I think it's
19 because I thought I was in love with him, and I
20 realized that wasn't love when I grew up. I'm not
21 real sure why. I think my judgment was very
22 impaired because of everything. I think I hated my
23 stepfather so much, honestly, that it just blinded
24 me of what was really right and wrong.

25 PRESIDING COMMISSIONER RISEN: Okay. But
26 drugs or alcohol didn't cloud your decision-making
27 abilities on this particular day when you sent the

1 victim down to the market?

2 INMATE TRIPP: I don't think so. I don't
3 remember being high or drinking that day.

4 PRESIDING COMMISSIONER RISEN: And you had
5 no adult convictions (inaudible).

6 INMATE TRIPP: No.

7 PRESIDING COMMISSIONER RISEN: Okay. Says
8 you're divorced. Were you divorced at the time of
9 the commitment offense?

10 INMATE TRIPP: No. I was still married and
11 my attorney advised me not to get a divorce until
12 after everything was over. So when I arrived at
13 CIW within the year, I was divorced.

14 PRESIDING COMMISSIONER RISEN: Okay. You
15 were born where? In California?

16 INMATE TRIPP: Yes. San Luis Obispo.

17 PRESIDING COMMISSIONER RISEN: You have one
18 half-sister and one half-brother. Your parents
19 separated when you were two years old.

20 INMATE TRIPP: Yes.

21 PRESIDING COMMISSIONER RISEN: Your mother
22 married William Ruckert. That's the guy who was
23 charged with the molestation.

24 INMATE TRIPP: Yeah.

25 PRESIDING COMMISSIONER RISEN: You were
26 especially close to your maternal grandmother, who
27 is now deceased.

1 INMATE TRIPP: Yes.

2 PRESIDING COMMISSIONER RISEN: Your mother
3 was a secretary and Ruckert was an electrician?

4 INMATE TRIPP: Yes.

5 PRESIDING COMMISSIONER RISEN: Says you were
6 close to your stepfather despite the fact he once
7 attempted to molest you once you were seven years
8 of age.

9 INMATE TRIPP: That part I disagree because
10 it wasn't a once thing. It was from seven all my
11 life until I decided I wasn't sleeping with him.
12 It was a molest thing when I was younger and as I
13 matured, it became a money exchange thing. For me.

14 PRESIDING COMMISSIONER RISEN: You received
15 average grades in school. Not a behavioral problem
16 until you met Hilton Tripp. That was your husband,
17 the guy you married.

18 INMATE TRIPP: Yes, Sir.

19 PRESIDING COMMISSIONER RISEN: And that
20 would be in the 10th grade?

21 INMATE TRIPP: Yeah, it was the 10th grade.

22 PRESIDING COMMISSIONER RISEN: What kind of
23 an influence did he have on you?

24 INMATE TRIPP: He was the one who was saving
25 me from my stepdad. That's why I ran away so much.

26 PRESIDING COMMISSIONER RISEN: Okay.

27 INMATE TRIPP: Because he was going to

1 protect me and save me.

2 PRESIDING COMMISSIONER RISEN: And it says
3 you graduated from a continuation high school.

4 INMATE TRIPP: Yes, Sir.

5 PRESIDING COMMISSIONER RISEN: Now, you
6 didn't want to marry Tripp?

7 INMATE TRIPP: When I was pregnant, I didn't
8 want to get -- Getting married wasn't something I
9 really wanted.

10 PRESIDING COMMISSIONER RISEN: Okay, but
11 your parents --

12 INMATE TRIPP: My stepdad did and one of my
13 grandmothers. They said it would be wise because I
14 was pregnant and I should do the right thing and
15 not have the baby out of --

16 PRESIDING COMMISSIONER RISEN: And Tripp was
17 the father.

18 INMATE TRIPP: Tripp was the father.

19 PRESIDING COMMISSIONER RISEN: Okay, then
20 your mother adopted the child.

21 INMATE TRIPP: Yes, Sir.

22 PRESIDING COMMISSIONER RISEN: And how old
23 is she now?

24 INMATE TRIPP: She's going to be 25 in June.

25 PRESIDING COMMISSIONER RISEN: Any type of
26 work prior to coming to prison?

27 INMATE TRIPP: I had pieces of jobs.

1 **PRESIDING COMMISSIONER RISEN:** How long was
2 the longest time you worked?

3 **INMATE TRIPP:** Probably, like, three months.
4 I was in Texas when I got certified to become a
5 nurse's aide.

6 **PRESIDING COMMISSIONER RISEN:** Okay, how
7 long before the commitment offense were you in
8 Texas?

9 **INMATE TRIPP:** I went to Texas the summer of
10 '77. Because I had just graduated. That's when I
11 first met my (inaudible). And I had to get a job
12 to come back to California.

13 **PRESIDING COMMISSIONER RISEN:** And you
14 worked about three months doing what?

15 **INMATE TRIPP:** I was working in a nursing
16 home. Trying to become a nurse. It was a class
17 where you worked. You could become a nurse's aide
18 as you were working and you took the schooling and
19 the training at the same time.

20 **PRESIDING COMMISSIONER RISEN:** Okay, now,
21 did you have a problem with drugs at all on the
22 street?

23 **INMATE TRIPP:** I consider me an addict, an
24 alcoholic, only because of the way I consumed
25 alcohol and drugs. When I did them, I consumed a
26 lot of them. I didn't just --

27 **PRESIDING COMMISSIONER RISEN:** Okay. What

1 age did you start using drugs?

2 INMATE TRIPP: I started smoking weed in the
3 ninth grade.

4 PRESIDING COMMISSIONER RISEN: And it just
5 went on from there?

6 INMATE TRIPP: Yeah. Most of my stuff was I
7 smoked marijuana and I drank hard liquor. Once in
8 a while, I would do acid. Once in a while, I'd do
9 speed. Once in a while, but --

10 PRESIDING COMMISSIONER RISEN: Okay. And at
11 this point, we'll go to the next part of the
12 hearing, post-conviction factors.

13 DEPUTY COMMISSIONER MAY: Thank you, Mr.
14 Chairman. At the last hearing -- That was November
15 the 6th, 2002. Inmate was granted, but the
16 Governor, on April 4th, 2003, reversed the grant
17 and with the following decision:

18 "According to the Probation Officer's
19 report, Tamron Carpenter and her
20 older sister were schedule to testify
21 in a criminal proceeding that William
22 Ruckert had sexually abused them.

23 Mr. Ruckert offered \$10,000 to his
24 stepdaughter BranDee Tripp, her
25 husband Hilton, and her husband's
26 friend to kill the girls before they
27 could testify. The originally agreed

1 to kidnap and murder Tamron's older
2 sister. When that plan failed, they
3 plotted to kidnap the 10 year old
4 Tamron. Ms. Tripp, age 20, was a
5 family friend of the young victim.
6 In fact, Mrs. Tripp was the only
7 person Tamron's mother trusted to
8 take Tamron places. Ms. Tripp
9 arranged to take Tamron swimming on
10 July the 8th, 1979. According to the
11 plans Tripp sent Tamron to the store
12 alone. Mr. Tripp and his friend met
13 Tamron there, offering to give her a
14 ride back. This provided them the
15 opportunity to kidnap Tamron, taking
16 her to the beach, where Mrs. Tripp
17 and her husband lived. Ms. Tripp's
18 husband and his friend tied Tamron
19 up, dug a shallow grave, and then
20 strangled and buried her. Ms. Tripp
21 pled to second degree murder on the
22 condition that she testify against
23 her stepfather, William Ruckert. She
24 was sentenced to 15 years to live.
25 While incarcerated, Mrs. Tripp has
26 participated in many self-help and
27 therapy programs, including Alcohol

1 and Narcotic Anonymous, 12 Step
2 program, various psychotherapy
3 groups, anger management programs,
4 and Victim Awareness Programs. She
5 has also been involved with a variety
6 of organizations and activities. She
7 has completed her GED and taken some
8 additional classes. All this is
9 commendable. The crime she
10 facilitated, however, was
11 particularly heinous, the planned
12 killing of an innocent child to
13 prevent her from testifying against a
14 serial child abuser. It was clear
15 that Tamron's mother was concerned
16 about her child's safety. Mrs. Tripp
17 was the only person she trusted to
18 take care of Tamron. Mrs. Tripp
19 abused the trust of not only Tamron's
20 mother, but also Tamron herself.
21 Mrs. Tripp arranged to send Tamron to
22 the store by herself for the very
23 purpose of facilitating the
24 kidnapping and subsequent murder.
25 Mrs. Tripp claims that she only
26 agreed to arrange for the kidnapping
27 on the condition that no one was to

1 be hurt. This is simply not credible
2 and is inconsistent with the facts.
3 Mrs. Tripp claimed she has accepted
4 responsibility for the crime and
5 realizes that her cooperation made
6 the victim more accessible to being
7 kidnapped and murdered. I am not
8 convinced, however, that Ms. Tripp is
9 not trying to minimize her
10 culpability. She says that the plan
11 had been to kidnap Tamron, collect
12 the money, and doublecross her
13 stepfather. But she had to realize
14 that Mr. Ruckert would not agree to
15 pay anything while Tamron's sister
16 could still testify against him.
17 Furthermore, it is not credible that
18 she did not know that Tamron would be
19 killed. Indeed, in her 1999
20 psychiatric evaluation, Mrs. Tripp
21 admits that she and her husband
22 discussed killing both Tamron and her
23 sister. Moreover, Mrs. Tripp and her
24 husband lived in a tent. Mrs. Tripp
25 had to know that they could not keep
26 Tamron hidden there very long. The
27 planned kidnap and murder of a 10

1 year old child is atrocious in and of
2 itself, but Mrs. Tripp's motive is
3 especially heinous. She aided in the
4 murder of profit to prevent the
5 victim from testifying and to allow a
6 serial child abuser to continue
7 abusing other innocent children.
8 These factors are far beyond the
9 minimum required to support a
10 conviction of second degree murder.
11 The Arroyo Grande Police Department
12 recommended against parole due to
13 Mrs. Tripp's active participation in
14 this heinous crime. I agree. The
15 calculated murder for hire,
16 demonstrating especially callous
17 disregard for human suffering,
18 indicates that Mrs. Tripp is not
19 suitable for parole at this time.
20 Additionally, I note that one factor
21 the Board relied upon in granting
22 parole was that Mrs. Tripp had no
23 juvenile record. I question,
24 however, Mrs. Tripp's truthfulness
25 regarding her discussion of her
26 juvenile history. During the
27 psychological evaluation in 1985,

1 1991, and 1993, she admitted to
2 having had behavior problems,
3 shoplifting, stealing cars, and
4 stealing from her parents. Yet at
5 the 2002 hearing, she indicates that
6 she had no prior criminal activities
7 before the murder. Mrs. Tripp has
8 demonstrated a very unstable
9 lifestyle. She was expelled from
10 school in the 10th grade. She is an
11 alcoholic and (inaudible) from
12 cocaine beginning as a teenager.
13 Prior to the murder, she was living
14 in a tent and stealing for food. In
15 prison, she accumulated 21
16 disciplinary reports, the most recent
17 in 1999. Over the years, psychiatric
18 evaluations have diagnosed her as
19 polysubstance dependent, having an
20 anti-social personality disorder, and
21 a quick and violent temper. Ms.
22 Tripp's role in this murder for hire
23 showed an exceptional callousness and
24 indifference to human life. In view
25 of her unstable history and
26 lifestyle, Mrs. Tripp must
27 demonstrate over a prolonged period

1 that the gains she has begun to make
2 in a controlled institutional setting
3 can be maintained upon release. I am
4 also concerned that Mrs. Tripp lacks
5 realistic parole plans. She has a
6 sparse employment history before
7 incarceration and does not appear to
8 have any credible employment
9 prospects if paroled. Instead, she
10 intends to rely on a trust fund and
11 live with her mother. In this
12 unstructured environment, Mrs. Tripp
13 may lose the gains she has made in
14 prison. Based upon each of the
15 negative factors discussed above, I
16 believe Mrs. Tripp still poses an
17 unreasonable risk of danger to
18 society if paroled at this time.
19 Accordingly, I reverse the Board of
20 Prison Terms' decision to parole Mrs.
21 Tripp."
22 Since her last hearing, she has remained
23 disciplinary free. She has accumulated a total of
24 14 128s, the last being May the 27th, 1999 for
25 excessive property. A total of 11 115s, the last
26 being March the 31st, 1988, Division F. And since
27 the last hearing, she has continued to participate

1 in various self-help and voluntary activities. She
2 completed the Inmate Assistance Module of Anger
3 Management, continued attendance and participation
4 as a member of AA, NA. She also participated in
5 the SOS group crochet project from November the
6 15th, 2002 through May 1st, 2003, and the CIW mass
7 choir. Then the assessment. Mrs. Tripp last
8 appeared before the Board -- She has continued to
9 participate in self-help, voluntary activities, and
10 the assessment was a positive outlook for its
11 future parole possibility and is an asset to the
12 institution. A summary by the Counselor, and that
13 is Pete Florence. With consideration to the
14 commitment offense, prison adjustment, and personal
15 interaction with Mrs. Tripp, this writer believes
16 the prisoner would probably pose a medium to low
17 degree of threat to the public if released from
18 prison at this time. The psychiatric report by Dr.
19 Hu dated January the 16th, 2004. Axis I, no
20 diagnosis. Axis II, no diagnosis. The Doctor
21 concluded the inmate has not been dangerous within
22 a controlled setting.

23 "I do not believe that she will be
24 dangerous if released to the
25 community. This is based on the
26 interview as well as review from her
27 Central File. The first couple of

1 years of incarceration has been
2 difficult with numerous write-ups.
3 However, the inmate has been
4 motivated in her self-discovery and
5 has improved dramatically over the
6 years, to the point where she has
7 matured significantly. The inmate
8 has gained a healthy respect for the
9 rights and privacy of others and
10 appeared to have followed diligently
11 in the rules and regulations here at
12 this institution. The inmate has
13 been able to keep her pathological
14 characteristics in control and she
15 has also attained a certain level of
16 peace and contentment within herself.
17 Her parole plans, though a viable
18 one, may be better improved if
19 certain additional structures are
20 involved, such as a search for higher
21 education in a junior college, or
22 even a college degree. Given her
23 level of high intellectual
24 functioning and, or the possibility
25 of a reentry program that can offer
26 her a better strategy of acclimation
27 back into society. Risk factors, as

1 always, would be if she ever
2 attempted to resort to acts of
3 criminality, though given her level
4 of peace and contentment, I would not
5 suspect that to be the case."

6 With that, I will return to the Chair.

7 **PRESIDING COMMISSIONER RISEN:** Okay.

8 Regarding your parole plans, I'm going to work from
9 your attorney's brief. It indicates that you've
10 been accepted by the Casa Solano, a residential
11 treatment facility in Grover Beach. Is that
12 correct?

13 **INMATE TRIPP:** Yes, Sir.

14 **PRESIDING COMMISSIONER RISEN:** And that's
15 where you were raised, in Grover Beach?

16 **INMATE TRIPP:** Yes, Sir.

17 **PRESIDING COMMISSIONER RISEN:** Your mother
18 also lives near there.

19 **INMATE TRIPP:** Yeah.

20 **ATTORNEY WOODWARD:** And extensive family.

21 **PRESIDING COMMISSIONER RISEN:** Yeah. Also,
22 they provide transportation. Says here, the
23 residents providing transportation, teaching
24 residents necessary life skills. Have you ever had
25 a driver's license?

26 **INMATE TRIPP:** Yeah. I had a driver's
27 license before I got arrested.